AFGE Master Collective Bargaining Agreement - Effective August 1, 2007

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Article 1
Recognition and Unit Description

Section 1: Parties to the Agreement

This Agreement is entered into between the American Federation of Government Employees, Council 238 (hereafter referred to as "the Union" or "AFGE") and the Environmental Protection Agency (hereafter referred to as "the Agency" or "EPA"), and collectively referred to as "the Parties". This Agreement shall be clearly identified as an Agreement between the Parties.

Section 2: Applicability

The provisions of this Agreement are applicable solely to employees and positions in the units of exclusive recognition by AFGE as certified by the Federal Labor Relations Authority in case numbers 22-09130(UC)-001 (non-professional) and 22-09130(UC)-002 (professional), dated January 8, 1980, as amended, and all subsequent FLRA certifications and/or clarifications, which are included herein by reference.

Section 3: The Parties shall maintain copies of current applicable Federal Labor Relations Authority AFGE/EPA bargaining unit certifications.

Section 4: EPA shall post a current list of AFGE Council 238 national bargaining units as certified by the FLRA on the Agency's intranet site.

Article 2
Definitions

Section 1: The following words and terms have the meanings given to them for the purposes of this Agreement:

A. "Employer", "Agency", or "Management" means the United States Environmental Protection Agency and its authorized representatives including supervisors and management officials.

B. "Union" means the American Federation of Government Employees, AFL-CIO, Council 238 or Local and its designated representatives and agents.

C. "Government" means the Government of the United States of America.

D. "Unit" means the consolidated bargaining unit for which the Union is the exclusive representative within the Agency.

E. "Local Level" means the location at which an election was conducted to determine whether the Union should become the exclusive representative (e.g. a Regional Office is

a local level). For the purposes of this Agreement, the part of the Union located at the Agency's headquarters is a local level.

F. "Representative", "Agent", or "Spokesperson" means an individual expressly designated and authorized by one of the Parties to speak for an make commitments on behalf of that Party.

G. "Agreement" means this collective bargaining agreement.

H. "Official time" means paid time when an employee would otherwise be in a duty status. It is an excusal from an employee's regular duties under the circumstances and conditions set forth in this Agreement.

I. "Laws" and "Statutes" means the Federal laws and Statutes of the United States.

J. "Regulations" means the written official policy of EPA and applicable Government-Wide rule or regulation.

K. "The Statute" means the Federal Service Labor-Management Relations Statute, Public Law 95-454.

Section 2: Other words and terms used in this Agreement:

A. Where other words or terms are defined in an applicable law or regulation they shall have that meaning.
B. Where words or terms are not defined in this Agreement, by applicable law or regulation, they shall have their dictionary meaning (Webster's Unabridged).

Article 3
Governing Laws and Regulations

Section 1: In the administration of all matters covered by this Agreement, the Union, Agency Officials and Employees shall be governed by applicable Federal Statutes, as well as, published Agency and Government-Wide regulations in existence at the time this Agreement was approved.

Article 4
Rights of the Employer

Section 1: Nothing in this Agreement shall affect the authority of any management official of the Agency to determine: mission, budget organization and internal security practices.

In accordance with applicable laws: to hire, assign, direct, layoff, and retain employees or to justly suspend, remove, reduce in grade or pay, or to take other disciplinary action against employees;

Assign work, make determinations with respect to contracting out, and to determine the personnel by which agency operations will be conducted;

With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion; or any other appropriate source; and take whatever actions may be necessary to maintain agency operations in emergency situations.

Nothing in this section shall preclude the Agency and the Union from negotiating:

At the election of the Agency: on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty; or on the technology, methods, and means of performing work;

Procedure which management officials of the Agency will observe in exercising any authority under this Article; or appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Section 2: The provisions of this Agreement must be applied and interpreted in a manner consistent with the requirements of an effective and efficient Government.

Article 5
Union Rights and Duties

Section 1: Employees shall be protected from restraint, interference, coercion, or discrimination in the legitimate exercise of their rights and responsibilities as designated representatives of the Union. Within the confines of laws, rules, and this Agreement, the Union has the right to designate representatives of its own choosing.

Section 2: The Parties agree to strive to improve communications between Employees and the Agency; to promote and improve Agency efficiency; and to improve the morale of the Employees.

Section 3: Bargaining unit employees have the right to participate, through the Union, in the formulation and implementation of policies and practices affecting conditions of their employment.

Section 4: The Agency will provide the Union with one copy of all changes to EPA Orders, Directives, Manuals and issuances relating to personnel policies, practices, procedures and matters affecting working conditions of the bargaining units.

Section 5: The Agency will furnish to the Union, or its authorized representatives, upon request, and to the extent not prohibited by law, data concerning the Bargaining Unit(s) which:

A. Is normally maintained by Management in the regular course of business;

B. Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

C. Does not constitute guidance, advice, counsel or training provided for management officials or supervisors related to collective bargaining.

Information requested will be provided within a reasonable time.

Section 6: The Union is responsible for representing the interests of all Bargaining Unit(s) employees without discrimination and without regard to labor union membership.

Section 7: The Union shall have the right and responsibility to present its views to the Employer either orally or in writing.

Section 8: The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the unit of their representation concerning any grievance or any personnel policy or practices or other general conditions of employment.

Section 9: If prior to or during any examination of an employee in the unit by a representative of the Agency in connection with an investigation there is reasonable belief by the employee that the examination may result in disciplinary action against the employee, and the employee requests Union representation, the employee has the right to Union representation.

Section 10: The Union will be afforded the opportunity to participate in the orientation process for bargaining unit employees. Due to the differences in numbers of employees, size and physical locations at various facilities, the local parties are authorized to negotiate arrangements to implement this section.

Section 11: The Union shall have the right to communicate with Bargaining Unit(s) employees. Methods and vehicles used by the Union to communicate with Bargaining Unit(s) employees is a proper subject for local negotiations.

Section 12: The Agency shall annually inform the employees of their right to Union representation.

Section 13: Nothing in this Agreement shall be interpreted in a manner that will waive employee rights under 5 U.S.C. 7102 of the Statute.

Article 6
Union Activities

Section 1: Bargaining unit employees expressly designated by the Union shall be allowed official time as Union representatives in accordance with applicable law, rules and regulations. All official time will be used when an employee would otherwise be in a duty status.

Section 2: The use of official time including attending union-sponsored training by bargaining unit employees who are Union representatives at the local level is an appropriate matter for local level bargaining.

Section 3: The National level representative of the Union will granted necessary, reasonable amounts of official time for National level matters.

Section 4: When it is necessary for a Union representative to leave his/her work station for representational purposes, the employee will inform his/her immediate supervisor when and where he/she needs to go, and provide the supervisor with a telephone number where he/she may be reached when practicable. In the event that a pressing job related need precludes the immediate excusal of the Union representative, the supervisor will inform the employee of the earliest time he/she will be permitted to leave the work site. The employee will report to the supervisor upon his/her return to the work site.

Section 5: At the end of each pay period each Union representative will submit a report of his/her official time to the official timekeeper. The report will include the amount of time used each workday with the time characterized by OPM reporting categories for use of official time. When a complete report is not possible at due time of submission, the Union representative will submit one as soon as possible.

Section 6: Union representatives will not use official time for internal union business including solicitation for membership or collection of dues.

Section 7: Employees may request leave without pay to serve as an AFGE representative or officer or to participate in other union related activities. Approved leave without pay is limited to one year and may be extended for only one additional year.

Section 8: Official time shall be granted in reasonable and necessary amounts to Union representatives for representational purposes, except for the following:

The Council President and the Executive Vice President shall be granted up to 100% use of official time.

Article 7
Labor/Management Relations

Section 1: The Parties agree to approach dealings with each other in an atmosphere of mutual respect and cooperation. Nothing in this Agreement is intended to prevent or discourage the Parties from communicating with each other through their duly appointed representatives at all levels. To the contrary, the Parties expressly encourage a continuing dialogue by their representatives in the belief that communication prevents and resolves difficulties which may arise.

Section 2: Local levels may establish labor relations committees or provisions for periodic meeting between the Parties. The procedures and processes for such activities are a matter for local level agreement.

Section 3: At the National and Local levels, the designated representatives will maintain open lines of communication in the day to day activities involving the Parties' relationship. Where the Parties believe face to face meetings would be appropriate, they may meet to discuss issues of mutual concern. The mechanics and procedures for such meetings will be decided by the representatives based on the circumstances at the time.

Section 4: Union participation on committees which are not management decision process orientated will be as described in the appropriate subject matter article.

Section 5: The Agency agrees to provide for reasonable accommodation(s) to qualified disabled employees who participate in labor-management relations activities, either as employees or Union representatives. This is not intended to apply to internal union business or off-site union-sponsored training.

Article 8
Employee Rights

Section 1: General. In an atmosphere of mutual respect, all employees shall be treated fairly and equitably and without discrimination in regard to their political affiliation, Union activity, race, color, religion, national origin, gender, sexual orientation, marital status, age, or non-disqualifying handicapping conditions. Employees will also be afforded proper regard for and protection of their privacy and constitutional rights. It is therefore agreed that the Agency and the Union will endeavor to establish working conditions which will be conducive to enhancing and improving employee morale, efficiency and effectiveness to further the mission of the Agency in protecting human health and the environment.

Section 2: Right to Union Membership. Employees have the right to join and assist the Union without fear of penalty or reprisal, and each employee shall be protected in the exercise of these rights. Included among these rights shall be the right to file a grievance and the right to participate in union activities in the capacity of Union officers, stewards, and representatives to management committees. Employees also have the right to refrain from these activities. Employees temporarily assigned to a managerial or supervisory position may not serve as a Union representative and are temporarily outside the bargaining unit.

Section 3: Right to Private Lives. Subject to applicable law, rule, and regulation, employees shall have the right to direct and/or fully pursue their private lives, personal welfare and personal beliefs without interference, coercion or discrimination by the Agency so long as such activities do not conflict with job responsibilities.

Section 4: Merit Systems Principles. The Parties endorse the following Merit Systems Principles found in 5 U.S.C. 2301 and agree that they will govern the administration of personnel management in the Agency.

A. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.

B. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

C. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

D. All employees should maintain high standards of integrity, conduct, and concern for the public interest.

E. The federal work force should be used efficiently and effectively.

F. Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

G. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

H. Employee's should be—

(1) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(2) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for election.

I. Employees should be protected against reprisal for the lawful disclosure of information which the employee reasonably believes evidences—

(1) a violation of any law, rule, or regulation, or

(2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Section 5: Prohibited Personnel Practices. The following personnel practices are prohibited as described in 5 U.S.C. 2302:

A. Discriminate for or against any employee or applicant for employment on the basis of race, color, religion, sex, age, handicapping condition, marital status, political affiliation or national origin.

B. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on personal knowledge or records of the person furnishing it and consists of—

(1) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(2) an evaluation of the character, loyalty, or suitability of such individual.

C. Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment for the refusal of any person to engage in such political activity.

D. Deceive, or willfully obstruct any person with respect to such person's right to compete for employment.

E. Influence and person to withdraw from competition from any position for the purpose of improving or injuring the prospects of any other person for employment.

F. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

G. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in, or to, a civilian position any individual who is a relative of such employee, if such position is in the agency in which such employee is serving as a public official or over which such employee exercises jurisdiction or control as such and official.

H. Take or fail to take or threaten to take or fail to take a personnel action with respect to any employee or applicant for employment because of—

(1) any disclosure of information by an employee or applicant which the employee or applicant reasonably evidences—

(a) a violation of any law, rule or regulation, or

(b) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by

Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee or applicant reasonably believes evidences—

(a) a violation of any law, rule or regulation, or

(b) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

I. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

(1) the exercise of any appeal, complaint, or grievance right granted by law, rule or regulation;

(2) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (1);

(3) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(4) refusing to obey an order that would require the individual to violate the law.

J. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness, any conviction of the employee or applicant, for any crime under the laws of any State, of the District of Columbia, or of the United States.

K. Knowingly take, recommend, or approve any personnel action or fail to take, recommend, or approve any personnel action, if the taking of such action would violate a veteran's preference requirement.

L. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in Section 4 of this Article.

Section 6: Additional Principles. The Union and the Agency further agree to practice the following principles:

A. Nothing in this Section is intended to prevent or limit management's right to assign work and direct employees. Instructions will be given in a reasonable and constructive

manner. To the maximum extent feasible, such instruction will be provided in an atmosphere that will avoid public embarrassment or ridicule. If an employee is to be served with a warrant or subpoena, it will be done in private without the knowledge of other employees to the extent it is within the Agency's control. Nothing in this Section interferes with the Agency's method and manner in assigning work and directing employees.

B. In accordance with federal law and the terms of this Agreement, no employee will be subject to intimidation, coercion, harassment, or unreasonable working conditions as reprisal for legally protected activity, nor shall any employee be used as an example to threaten other employees.

C. When employees receive conflicting orders, they should discuss the matter with their immediate supervisor to resolve the conflict. In the case of an emergency, the employee is expected to act with appropriate prudence and responsibility.

D. The Agency will make every reasonable effort to continue to provide for the secure storage of appropriate personal belongings. When new furniture is installed, the furniture will contain lockable, secure space for the storage of personal belongings. Any search of these accommodations must be done in compliance with applicable law, rule and regulation.

E. An employee is free to resign or retire at any time, to set the effective date of his/her resignation or retirement, and to have his/her reasons for resigning/retiring entered in his/her official records. The Agency may permit an employee to withdraw his/her resignation/retirement at any time before it has become effective. The Agency may decline a request to withdraw a resignation/retirement before its effective date only when the Agency has a valid reason and explains that to the employee. A valid reason includes, but is not limited to, administrative disruption or the hiring or commitment to hire a replacement, or the presence of an executed settlement agreement.

F. No electronic recording of any conversation between a bargaining unit employee and a management official may be made without mutual consent, except for Inspector General Investigations, or other law enforcement investigations conducted by agencies outside of EPA. When a transcript is made from a recording, the employee will be given the opportunity to review the transcript for accuracy and the employee will be provided a copy of both the tape and the transcript, if any. Information obtained in conflict with this section will not be used as evidence against any employee. This provision does not apply to the video-taping of training session.

G. When Agency approval of outside employment is required, the Agency agrees to approve or disapprove an employee's written request to engage in outside employment as soon as possible. The Ethics Officer or designee will respond in writing and if the request is denied, the reason for doing so will be included.

Section 7: Right to Voice Concerns.

A. If the employee wishes to discuss a condition of employment or potential grievance with a Union representative, the employee shall have the right to contact and meet with the Union representative on duty time.

B. Employees shall also have access to management officials on duty time and in accordance with this Section. Employees are encouraged to voice their concern at the lowest level of authority that can effectively correct it. However, employees have the right to communicate with the following:

(1) A supervisor or management official of a higher rank than the employee's immediate supervisor;
(2) The Human Resources Office;
(3) An Equal Employment Opportunity Specialist or Officer and/or an Equal Employment Opportunity Counselor; and
(4) The Financial Management Officer or designee on matters directly affecting the employee.

C. Employees will advise their supervisor of the need to contact the aforementioned. Should a pressing operational exigency preclude the employee's immediate release, the supervisor will advise the employee of the earliest time he/she may leave the work site. The employee will give the supervisor an estimated duration of his/her expected absence and will telephone the supervisor if more time is needed. The employee will not be requested to discuss the substance of the issue with the supervisor.

Section 8: Right to Representation. Except for grievances submitted under Article 38 of this Agreement, employees may be represented by an attorney or any other representative of their choosing, provided there is no conflict of interest. In a grievance submitted under Article 38 of this Agreement, the employee may choose to represent him or herself, or be represented by a representative designated by the Union.

Section 9: Right of Access to Documentation.

A. In accordance with applicable laws and regulations, employees have the right to be made aware of and receive copies of any information specific to them that is maintained under the Agency's official systems of records as published by EPA in the Federal Register. Upon request, an employee may see such records and have a copy made of them. All such records shall be deemed confidential, shall be viewed or disseminated only to officials/employees with a legitimate administrative need to know, and must be maintained in a secure location.

B. Employees and/or their authorized representatives shall have the right and shall be granted a reasonable amount of official time to examine any of their personnel records (as defined in Article 8, Section 9A above) during their regular work hours and in the presence of a management official. The employee shall have the right to prepare and enter on the record, while in duty status, a response to material placed in such records.

C. Access to the employee's personnel records (as defined in Article 8, Section 9A above) shall be granted to the employee and/or the employee's representative within three (3) work days of the request if such records are maintained on the premises in which the employee is located and are readily available. If the records are not so maintained, the Agency will initiate prompt action to obtain the records from their remote location.

Section 10: Participation in Voluntary Activities. Employees have the right to participate or decline to participate in the Combined Federal Campaign, blood donor drives, bond campaigns, and similar worthy causes on a voluntary basis. This does not preclude giving general publicity and encouragement to employees to take part in such activities. However, the Agency will not require or coerce employees to invest their money, donate to charity, or otherwise participate in these activities. Participation or non-participation will not be used to advantage or disadvantage employees.

Section 11: Right to Debt Collection.

A. It is recognized that all employees are expected to pay promptly all just financial obligations. Employee garnishments will be processed in accordance with the provisions of 5 C.F.R. Parts 581 and 582. The Agency agrees to hold in confidence any and all debt notices and in the event of a dispute between an employee and a private individual or firm with respect to an alleged debt or financial obligation, where the debt is not acknowledged by the employee or reduced to a judgment, the Agency will not act as an arbitrator nor will the Agency take any action against the employee which is not directly related to the debt. This provision does not apply to debts against the United States of America which are considered a just obligation upon presentation to the employee, or to debts incurred on credit cards issued to the employee for use in Official Government business.

B. Prior to initiating a collection action through salary offset for a debt against the United States, the Agency will provide notice to the employee of the employee's rights as outlined in appropriate regulation, as well as a copy of such regulation, if requested.

Section 12: Right to Proper Payment. The Agency agrees that employees are entitled to their proper pay or reimbursement at the proper time in the proper amount. The Union and the Agency endorse the use of electronic deposit of payments by the Agency to the employee. No sooner than sixty (60) days from the effective date of this Agreement, delivery of payments to the office will be discontinued. Employees must utilize electronic transfer unless a hardship is demonstrated. If a hardship waiver is approved, the employee will receive his/her check by mail at an address designated by the employee for that purpose. If an employee is overpaid, the Agency will explain to the affected employee the circumstances of the overpayment and will assist the employee in the completion of a Request for Waiver of Claim for Erroneous Payment. It is the responsibility of the employee to notify the Agency of overpayment immediately.

In the case of overpayment or underpayment of net pay due to the error of the Agency, the Agency will expeditiously attempt to correct the overpayment, and reimburse the employee any

interest and penalties incurred by the employee as a result of the overpayment, to the extent authorized by law, rule and regulation.

Section 13: Right to Notice of Benefits.

A. The Agency will inform employees of the following:

(1) Notice of Thrift Savings Plan Open Season;

(2) Notice of Federal Employee Health Benefits (FEHB) Open Season;

(3) Copies of FEHB provider brochures;

(4) Timely notice of discontinued service by an FEHB provider;

(5) Notice of any open seasons for Federal Group Life Insurance, and conversion for other pension systems, etc.

B. Employees in a non-pay status may remain covered by the FEHB program in accordance with applicable law and regulations.

Article 9
Professional Employees

Section 1: In addition to the rest of this Agreement, the following provisions in this Article apply to professional employees.

Section 2: Employees required by the Agency to attend a professional convention or conference will be in a duty status while in attendance. Travel (if any) to and from such conventions or conferences will be administered in accordance with the Agency's travel policies and procedures.

Article 10
Dues Withholding

Section 1: Withholding. As authorized by 5 U.S.C. § 7115, employees will have their Union dues withheld through payroll deductions as described more fully below.

Section 2: Eligibility. To be eligible to make a voluntary Union allotment, an employee must:

A. Be a member in good standing with the Union; and

B. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of authorized allotments; and

C. Submit an SF-1187 to a designated Union representative.

Section 3: The Agency's payroll/HR system provider allows for:

A. Electronic distribution of an employee's allotment to AFGE National (Washington D.C.). AFGE Council 238, and each Local Union; the amounts may vary from Local to Local as well as within a Local.
B. Alphabetical listings of employees whose allotments are terminated or temporarily suspended citing Nature of Action Code on an SF 50 shall be provided to the Union at the local level.

Section 4: Responsibilities of the Union. The Union shall:

A. Inform and educate its members of the voluntary nature of the allotment program, including conditions governing institution of allotments;

B. Provide forms SF-1187 "Request and Payroll Deduction for Labor Organization Dues," and SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues," to employees;

C. State on the SF-1187 the allotment amount to be withheld each bi-weekly pay period and maintain copies of form SF-1187s for all active union members;

D. Promptly certify and forward properly completed SF-1187 and SF-1188 forms to the Human Resources Office for submission to the payroll office;

E. Furnish a written statement to the Agency payroll office listing the names and titles of Local Union officials authorized to certify the form SF-1187; and

F. Provide the Agency payroll office via the Human Resources Office with written notification concerning:

(1) changes in the amount of Union allotments;

(2) changes in the Union officials who may certify and submit SF-1187s and SF-1188s.

(3) a change in the bank routing number and/or account number used by the Union for the receipt of dues allotments.

(4) the name of any employee who has been expelled or ceased to be a member of good standing in the Union within fifteen (15) days after the date of final determination.

Section 5: Agency Responsibilities. The Agency agrees to:

A. Withhold dues on a bi-weekly basis, at no charge to the Union.

B. Forward to the designated Union officials for approval, copies of SF-1188s received directly from Union members for processing;

C. Whenever an employee enters into duty, either for the first time or following a transfer or reassignment, an SF-1187 will be provided to the employee along with a welcome letter from the Local President. The SF-1187 and welcome letter will be provided to the employee at the same time as other forms such as tax withholding forms, direct deposit of payroll forms, health benefit forms, and similar documents.

D. Within ten (10) days of the close of each pay period, transmit employee dues withholdings to the bank account designated by the Union.

E. At each servicing Human Resource Office and alternate locations where forms are normally processed by Human Resources Offices are made available in self service dispensers, Form SF-1187 will be among the forms made available to employees. The Union will be responsible for stocking and restocking the dispensers with SF-1187 forms.

F. For each transmittal of dues withholdings, the Agency will provide a dues withholding report that contains an alphabetical listing of employees, the allotment withheld from each employee, and the total allotment and total number of employee that had dues withheld.

G. When an employee's dues are discontinued because the employee has left the applicable Local or will be placed in non-pay status through a personnel action (SF-52), a sanitized copy of the document(s) forming the basis for the discontinuance will be provided to the Union. Examples of such events would generally include, extended periods of leave without pay, permanent reassignment to a location within the consolidated unit represented by a different Local, reassignment or promotion to a position outside the consolidated unit, termination, and/or resignation.

H. Whenever an employee is reassigned within the consolidated unit, but to an administrative unit represented by a different Local, the employee's dues withholding will be remitted to the Local representing employees at the new administrative unit the first full pay period following the effective date of the reassignment. The amount of dues withholding remitted to the employee's new Local representative will be equal to the amount remitted to the employee's previous Local representative, until notified otherwise by the employee's new Local representative.

I. The Agency will terminate an employee's voluntary allotment on the first full pay period following: (1) loss of exclusive recognition by the Union, (2) assignment or reassignment of the employee to an administrative unit outside of any of the Union's recognized bargaining units, (3) separation of the employee from the Agency, (4) upon notice from the Union that the employee has been expelled or ceased to be a member in good standing of the Union, (5) when the agreement for dues withholding is suspended or terminated by and appropriate authority outside the Agency.

Section 6: Processing Steps to Effect Allotment Withholding. Bargaining unit members, who wish to join the Union, will have their dues, fees, and assessment, known collectively as allotments, withheld by payroll deduction by completing a form SF-1187, and submitting it to officials designated by the Union. These officials will certify the form and include the amount of allotment to be withheld. The Union will forward the certified form SF-1187 to the Agency Human Resources Office for transmittal to the Payroll Office for processing. Allotments will be withheld by the Agency beginning the first bi-weekly pay period after receipt by the payroll office.

Section 7: Revocation of Allotments.

A. As required by 5 U.S.C. § 7115(a), employees may not revoke their dues withholding for at least one (1) year after the first deduction: employees must submit a timely SF-1188, "Cancellation of Payroll Deductions For Labor Organization Dues" to the designated Union official.

B. "Anniversary date" means the date the employee signed his/her first SF-1187 that caused the initiation of allotment withholding. If no copy of the initiating SF-1187 can be located by the Union, then the "Anniversary date" shall be assumed to be a date ten (10) days prior to the first day of the pay period that the Union allotments were withheld.

C. "Open Season" is unique to each individual and is defined to be thirty (30) days in length, with the first day being (and including) the date twenty-one (21) days prior to the anniversary date and ending nine (9) days after the anniversary date.

D. If the employee does not timely submit a properly completed SF-1188 during the open season, his/her withholding allotment may not be revoked until his/her next open season. The SF-1188 submitted by the employee will be returned to the employee by the Union unprocessed with an explanation attached.

E. When an employee timely submits a properly completed SF-1188, the designated Union official will indicate the effective date of revocation on the SF-1188, and submit the form to the Payroll Office via the Human Resources Office. The termination of dues will occur the first bi-weekly pay period after receipt by the Payroll Office.

Section 8: Reinstatement of Allotment Withholding.

A. When the employee is temporarily detailed, reassigned or promoted to a position outside the bargaining unit, the Union allotment withholding will restart automatically when the employee returns to his/her position in the bargaining unit.

B. When an employee previously on dues allotment returns to pay status from non-pay status, the Agency will automatically reinstate the allotment withholding at the rate in effect at the time the employee returns to pay status.

C. Upon determination by the Federal Labor Relations Authority or a court, that the Agency removed a position from the bargaining unit which should have remained in the unit, and the incumbent(s) was a dues paying member of the Union at the time of removal, the Agency shall reimburse the Union for any lost dues income due to the removal from the bargaining unit. Payment to the Union will be made as soon as possible, generally within two (2) pay periods from the date that the determination was final. Nothing herein compromises or reduces the remedies available to the Union under the law.

Section 9: Privacy. The Agency will exercise caution in the retention and release of information concerning employee dues withholdings and such information will only be released to those management officials with a "need to know."

Section 10: Correction of Errors.

A. The Agency agrees that any under withholding errors made by the Agency shall be corrected as soon as practical after the error is discovered by the Agency or after the Agency has received a written notification from the Union's designated representative of the error.

B. If an under withholding occurs, the Agency will provide the employee with a written explanation that indicates the additional amount to be withheld each pay period and the number of pay periods over which the additional amount will be withheld to correct the error.

C. If the Agency, through and administrative error, does not process an approved SF-1188 timely (over collects from the employee), the Union will be responsible for re-payment of the employee.

Section 11: Continuation of Existing Agreements. Employees who have a current dues withholding agreement in effect on the date this Agreement is approved need not execute a new SF-1187 to come under the provisions of this Agreement.

Article 11
Use of Agency Facilities

Section 1: The provision of any Agency controlled facilities is a matter for local level negotiations, to the extent they are within the control of local management and not within a secured or restricted area. Such facilities include office space, fax machines, electronic mail boxes, telephones, bulletin boards, meeting rooms, office equipment, and access to review laws, rules and regulations as the Agency maintains.

Section 2: The national level Union representative may use the same facilities and space provided to the local Union by Agreement solely between the Union representatives.

Section 3: Use of facilities as stated in Section 1 for national representatives at their duty locations is a matter for local negotiations.

Section 4: When national level Union representatives visit, the Agency agrees to furnish, when available, the use of Agency facilities as described in Section 1.

Section 5: The Parties agree that office space for the Union could be useful in facilitating effective representation of unit employees. In the event that office space cannot be provided, the Agency may bargain with the Union over alternative arrangements, in lieu of office space. This is a matter for local negotiations.

Section 6: Facilities for membership drives during break and lunch periods is a matter for local negotiations.

Section 7: Official publications of the Union may not be distributed by designated Union representatives during duty time.

Article 12
Child Care Facilities

Section 1: The Parties agree that child care facilities are beneficial to employees and the Agency.

Section 2: Provisions for child care facilities is a matter for local level negotiations subject to applicable law and regulations.

Article 13
Employee Counseling and Assistance Program

Section 1: The Agency and the Union recognize the importance of an Employee Assistance Program for employees whose job performance is affected by the abuse of alcohol or other drugs, emotional or mental illness or other personal problems. The success of such a program is dependent upon participation by both the Agency and the Union. Employee participation in the program shall be voluntary.

Section 2: It is understood that the employee has the responsibility to maintain acceptable performance while he/she is on the job. The Agency agrees to consider the employee's personal problems that are brought to the Agency's attention by the employee when evaluating the employee's performance or when making assignments of work.

Section 3: Employee counseling may include services provided by a service contracted for by the Agency, at no charge to the employee, or referral to outside professional treatment and assistance sources in the local community.

Section 4: The Union shall inform unit members of the existence and operation of the program and refer those seeking assistance to the Program Coordinator. The Agency will keep the Union informed concerning the correct telephone numbers and contacts for the Program.

Section 5: On a periodic basis, the Parties shall publicize the Program, including the name of the Program Coordinator to employees. The Parties hereby give their assurances of confidentiality for employee participants.

Section 6: The Agency agrees to arrange periodic briefings from staff of the Program for Union representatives. These briefings will include information about the services provided by the Program, procedures for obtaining services, and guidance on how to make referrals in an effective and sensitive way.

Article 14
Fitness and Wellness Centers

Section 1: The Agency, within budgetary limitations, agrees to provide a wellness/fitness program. This is a matter for local level bargaining. The Parties recognize that some of the activities of the Program developed and implemented pursuant to this Article may involve, in part or in whole, employee financial contributions as well as use of non-duty hours for participation. The Parties mutually agree that employee wellness is ultimately the individual responsibility of each employee.

Section 2: Employees who are required by the Agency to maintain a high level of physical and mental fitness for the performance of their duties may be granted a reasonable amount of time for exercise. This matter is delegated the local level for bargaining consistent with Section 1 of this Article.

Section 3: Due to geographic areas and facilities in several locations within one geographic area, the Parties agree that provisions for Fitness and Wellness Centers are a matter of Local level bargaining.

Article 15
Drug Free Workplace

Section 1: The Agency will administer its drug testing program in accordance with Executive Order 12564, the HHS Mandatory Guidelines for Federal Drug Testing Programs, EPA's Drug-Free Workplace Plan dated January 1998, other relevant laws and Government-wide regulations, and this Agreement.

Section 2: Random Testing.

A. The Agency will designate positions subject to random drug testing. Employees occupying such positions will be notified in writing of this designation on a periodic basis. Whenever any change is made to a position's designation, the employee will be notified in writing no later than the next work day.

B. The Agency will provide each employee who is subject to required random testing with an individual (specific) notice of testing at least thirty (30) days prior to initiating testing. Such notices will include at a minimum:

(1) That the employee is subject to mandatory random testing;
(2) The consequences of a positive result or refusal to cooperate, including adverse action;
(3) That after any confirmed positive drug test there will be an opportunity for them to submit supplemental medical documentation to support the legitimate use of a specific drug;
(4) That drug abuse counseling and referral services are available through the Employee Assistance Program (EAP). The employee can seek counseling voluntarily prior to testing without reprisal. The notice will contain information on how to contact the EAP.

C. The Agency's drug testing selection methodology shall ensure that employees subject to testing in an area with an active random testing program will have an equal likelihood of being selected for testing. The basic required random testing program shall not be used to single out any individual employee or group of employees for increased frequency of testing.

D. An employee who is selected to report for random drug testing shall be notified orally two (2) hours prior to the time he/she is to report. Whenever possible, this oral notification will be confirmed promptly by electronic mail. Oral notification will be made as discretely as possible. The employee will be provided the following information at a minimum:

(1) That he/she was randomly selected and is not under suspicion of taking illegal drugs;
(2) Where and when to report for testing;
(3) The consequences of refusing to report for testing, including possible removal;
(4) The employee will be required to sign in at the collection site and provide a picture identification.

Section 3: Reasonable Suspicion Testing.

A. Reasonable suspicion testing may be required of:

(1) Any employee in a TDP when there is reasonable suspicion that the employee uses illegal drugs, whether on or off duty, or
(2) Any employee in any position when there is reasonable suspicion of on duty use or on duty impairment.

B. Prior to directing an employee to testing based on a reasonable suspicion that the employee uses illegal drugs, the supervisor ordering such testing will receive concurrence

from a higher level official or authorized management official. A written statement will be prepared that will document the concurrence and articulate the reasons for testing.

Section 4: Methods and Procedures for Testing.

A. All drug testing will be conducted in accordance with the HHS scientific and technical guidelines. The methods and equipment used will meet the requirements set forth in the guidelines. The Agency agrees that the following procedure will be utilized to assure drug testing is reliable:

(1) Affected employees will report at Agency expense to the designated location to be tested;
(2) Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided;
(3) Laboratory analysis will comply with the HHS technical guidelines in effect at the time of testing;
(4) If sufficient volume of urine is not initially able to be provided the Agency will ensure that collection site personnel allow the employee a reasonable amount of time to produce a sufficient volume;
(5) The collection, handling and transportation of all specimens will be in accordance with the HHS chain of custody procedures;
(6) An authorized agent will collect all drug testing specimens.

Section 5: Confidentiality and Safeguarding Information.

(1) All samples will be subject to a strict chain of custody in accordance with the HHS technical guidelines.
(2) Employees will be guaranteed confidentiality in all matters relating to drug testing.
(3) Testing laboratories will not provide unconfirmed initial positive test results to the Agency.
(4) Upon written request, employees will be given access to all records relating to his/her drug test.

Section 6: Counseling and Rehabilitation.

A. Employees whose tests have been confirmed positive will be referred to the Employee Assistance Program at no cost to the employee.

B. When feasible, the services of the EAP will be offered at no cost to family members of employees with substance abuse problems and offered to employees who have family members with substance abuse problems.

Article 16
Worker's Compensation

Section 1: The Parties agree that employee(s) or witness(es) should report any occupational on the job injury, disease or death immediately or as soon as possible to the Agency.

Section 2: The Agency will provide the employee and/or another person, including the Agency on the employee's behalf, the following information regarding the Department of Labor, Office of Worker's Compensation Program as cited in 20 C.F.R. Part 10:

A. Information on the right to file claims, including the right to use compensation benefits in lieu of sick or annual leave;

B. Information on the types of benefits available, including the receipt of forty-five (45) days of continuation of pay following a traumatic injury;

C. The procedures and correct forms for filing claims.

Section 3: When an on the job injury is reported, the Agency will provide emergency or appropriate medical treatment for any such injury or illness suffered by an employee while on the job.

Section 4: The Agency will counsel an injured employee, and/or another person on the employee's behalf, on options, compensation benefits, and/or types of leave when the injury or illness causes an absence of more than three (3) days.

Section 5: The Agency will counsel a disabled employee on all aspects of disability retirement, if appropriate, when a compensation claim is pending. Before removing an employee who has been on Worker's Compensation benefits (LWOP) for over a year, with no anticipated return to full duty, the Agency will provide him/her with possible job options, such as continued long-term worker's compensation, disability retirement, resignation. There will be no effort to urge the employee to choose on option over another regarding claims for benefits.

Article 17
Medical Examinations

Section 1: In directing employees to undergo medical examinations, the Agency agrees to follow 5 C.F.R. Part 339, Medical Qualification Determinations.

Section 2: All records pertaining to the employee's examination and, as applicable, any subsequent personal information included with an application for disability retirement are confidential and may be disclosed only to those with an administrative need to know or as specifically authorized by the subject employee in writing.

Article 18
Smoking Policy

Section 1: The Agency's and applicable Federal laws, rules and regulations, will be complied with to ensure a smoke free environment in EPA controlled spaces. This smoke free environment protects the health and safety of employees and visitors.

A. Smoking is prohibited in all Agency occupied space and vehicles owned or leased by EPA or GSA.

B. At EPA owned facilities, the Agency will designate outdoor smoking areas, if possible, which are reasonable accessible to employees and provide a reasonable measure of protection from the elements. Designation of outdoor areas where smoking is permitted or prohibited will be subject to local level negotiations, except that every EPA owned facility will provide a minimum of one (1) outdoor area which will be properly equipped with ash trays and seating where possible. In GSA owned or leased facility the Agency will request that such outdoor facilities be provided.

Section 2: The Parties support and encourage efforts by employees to stop smoking. The Agency shall sponsor or provide a smoking cessation program periodically, as warranted. Employees will be provided the opportunity to participate in the Agency's smoking cessation program, at no cost to the employee. Employee participation is voluntary.

Article 19
Employee Pantry/Kitchenette Facilities

Section 1: The Parties agree that the Agency shall provide pantry/kitchenette facilities for employees that are safe and well lighted. These areas shall be equipped with a microwave oven and refrigerator. Where possible, a table and chairs will be provided. The Agency will provide vending machines with foods and beverages where possible.

Section 2: Vending machines will display a telephone number for obtaining reimbursement for money lost and for reporting malfunctions during work hours.

Section 3: Local Parties are authorized to negotiate for additional provisions beyond these minimum requirements.

Article 20
Health and Safety

Section 1: It is recognized that the health and safety of the employees is a mutual concern of the Agency and the Union.

A. The Agency shall provide a safe, sound and healthful working environment and conditions consistent with appropriate health and safety standards and controlling laws.

B. The Parties will also cooperate by encouraging employee to abide by correct safety practices.

C. Protective equipment shall be provided, maintained, and replaced by the Agency whenever such equipment is determined to be required for compliance with OSHA, HHS and NRC regulations for protection against occupational exposure to hazardous chemicals or biological or radiological irritants which could cause illness or injury, as defined under OSHA, HHS and NRC Regulations. The Agency shall provide training when appropriate in the use of all protective equipment, such as respirators, but not limited to.

Section 2: Employees:

A. Shall comply with OSHA and EPA Occupational Health and Safety Standards, rules, regulations, and orders;

B. Will use the safety equipment, personal protective equipment and other health and safety devices provided by the Agency;

C. Shall follow the procedures, provided or as directed, necessary for their protection;

D. Shall report any work related property and personnel accidents, and illnesses to management; and

E. May decline to perform assigned tasks because of reasonable belief that under the circumstances the task poses an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. Such imminent risk may be caused by failure of the employer to provide appropriate protective clothing or equipment.

Section 3: Employees may voluntarily participate in immunization programs when EPA can provide or offer such services to employees.

Section 4: On local level health and safety committees, the Union will be permitted to designate one (1) bargaining unit employee to serve on the committee. The Parties agree that all confidential information will be protected and treated accordingly. It is understood that such committees are advisory bodies to management on health and safety issues.

Section 5: The Union will designate a representative for all safety and health matters which are beyond local scope and impact. The Agency will contact that individual when it is planning changes or modifications in its national health and safety program which will have an impact on bargaining unit employees at more than one location.

Section 6: The Agency agrees to furnish the Union the name and location of the Safety and Health Program Coordinator, Director EHSD, and other officials having responsibilities in the Safety Program.

Section 7: Union representatives on safety committees shall receive the same training opportunities as other committee members as a result of their membership on the committee.

Section 8: The Agency agrees to grant the Union access to any Material Data Safety Sheets maintained or prepared by the Agency, manufacturer or distributor on chemicals to which bargaining unit employees may be exposed. The Agency agrees to implement the Hazard Communication Standards.

Section 9: When a health and safety inspection is conducted on the Agency's premises, a Union representative will be notified in advance and permitted to accompany the inspection team.

Section 10: The Agency may grant administrative excusal to employees because of any environmental condition problems when unhealthy, or unsafe conditions are such as to actually prevent working in a safe environment.

Section 11: Where Union representatives are selected for appointment to a Field Federal Safety Council, they will be in a duty status to attend and participate in Council meetings.

Section 12: It is understood that employees may be required to undergo a medical monitoring examination. When the Agency provides for additional examinations (available only after all mandatory examinations), the Agency will give an employee an opportunity to volunteer for the examination. When there are insufficient examinations available for all volunteers, the Agency will decide those to be examined based on the duties of employees and their actual or potential exposure to hazardous conditions.

Section 13:

A. The Agency shall notify an employee involved in a reported job-related accident, as soon as possible, of all the options, responsibilities, and benefits under the Federal Employee's Compensation Act.

B. Consistent with applicable law, the Agency agrees to compile and maintain the appropriate records involving occupational injuries and illnesses and reported possible causes of potential injuries and illnesses.

Section 14: If indoor air quality testing is already being conducted which provides the information listed below, upon request of the local Union health and safety designee, the Agency shall provide an annual report to the Union of the quality of air in agency work spaces where bargaining unit employees are located. The report shall contain:

A. Percents of outside ambient air as compared to the American Association of Heating, Refrigeration, and Air Conditioning Engineers (AAHRACE) standards;

B. Radon, asbestos, volatile organic hydrocarbons, ozone, and carbon monoxide levels.

Section 15: Where available under existing public health programs, the Agency will offer the opportunity for all employees not covered by the Medical Monitoring Program to participate in an annual general physical examination program which will include indications of job stress and management.

Section 16: Union-Management Safety and Health Committees

A. The Agency may agree to establish or continue a joint safety and health committee at the national and local levels, and funding as available, as provided for in Executive Order 12196, 1-3. These committees shall make recommendations to the appropriate authorities with regard to occupational safety and health, in accordance with 29 CFR Part 1960, Subpart F.

B. National level will have a Safety and Health Committee with equal representatives appointed by the Union as appointed by the Agency.

C. Each local Safety and Health Committee will have a least one (1) member appointed by the Union.

Section 17: Upon request, the Agency agrees to provide the Union a copy of all reports of Safety and Health inspections, accidents, and occupational illnesses, subject to the Privacy Act. The Parties agree that such information may be sanitized.

Article 21
Computer Displays and Workstations

Section 1: Within the Agency's infrastructure there are many positions which require extended periods of time of sitting and working before a desktop and/or laptop computer which includes monitors for visual display of data.

Section 2: Employees who suspect that an adverse health effect is caused by use of a computer and its visual display of data may report their condition to their supervisor or the appropriate health and safety official. The Agency shall review the conditions reported by the employee and, if recommended by the appropriate Agency health and safety official, implement corrective measures consistent with Section 4 of this Article.

Section 3: If applicable, rest breaks for positions that require constant monitoring of a video screen by employees is a matter for local negotiations.

Section 4: The Agency agrees to utilize corrective measures to reduce the effects of any possible adverse factors on employees and/or their conditions of employment, such as but not limited to:

(a) Adjustable chairs with the capacity to allow personal adjustment to suit each employee will be provided to allow optimum comfort for heights, back and tension, and the minimum amount

of physical stress for each employee. Chairs with high or low back, full length and half length arms rest, or chairs without arms rests will be provided.

(b) Hoods will be provided for screens when needed to avoid glares and minimize eye strain.

(c) Adjustments to office illumination may be made, consistent with GSA standards, as needed.

(d) All working surfaces and the paneling materials around the workstation shall be low reflecting to minimize glare and/or contrast problems.

(e) Workstations shall be adjustable so that the angle of employees' forearms is proper for typing to minimize any adverse effects of repetitive motions.

(f) Positioning of desktop monitors will be at the proper angle to the windows to avoid the glare.

(g) Avoid placement of monitors near an unshaded or uncovered window.

(h) The Agency will make every reasonable effort to reduce sources of glare surrounding employees' work station.

(i) Avoid placement of an employee directly under an air vent.

(j) Provide footrests at work stations where needed.

The above actions are subject to the availability of funds.

Section 5: The Agency will apply Article 20 in the provision of adequate and safe ventilation, safe level of relative humidity, ambient temperature, heat or air conditioning, and proper lighting in each office.

Section 6: Employees who become pregnant may request a temporary limit on the period of work at a computer work station, if required by a qualified physician for medical purposes. A request to limit duties will be conditioned upon receipt of certification from the employee's physician that a change of duties is required for medical purposes.

Section 7: Employees shall report malfunctioning computers to their supervisor or appropriate information systems office.

Section 8: Should a problem arise involving more than one (1) employee concerning the safety and health of computer workstations (including physical discomfort, both physical and psychological stress, etc.), the matter may be referred by the employee (through his/her supervisor) to the parties' safety and health committee or appropriate agency official, for investigation and resolution. The investigations shall include, as appropriate, an evaluation of the workstation design, illumination, glare control, or other specifically identified problems. Corrective actions are contingent upon funds being available.

Section 9: Nothing in this Article shall limit employees' rights under the Rehabilitation Act and Americans' With Disabilities Act.

Article 22
Flexiplace

Section 1: The National AFGE/EPA Flexiplace Agreement is hereby incorporated and made a part of this Agreement.

Article 23
Hours of Work

Section 1: The administrative workweek means a period of seven (7) consecutive calendar days designated in advance by the head of an Agency. For employees of EPA the seven (7) consecutive days begins on Sunday.

Except for employees on the compressed work schedules, the regularly scheduled workweek for a full-time employee means the forty (40) hour period within an administrative workweek an employee is regularly scheduled to work. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

Section 2: The Parties agree that compressed work schedules and flexitime plans are appropriate matters for bargaining at the local level.

Section 3: Employees who normally may not leave their assigned tasks for any personal reasons (e.g. to obtain coffee; to make telephone calls; to use the bathroom; etc.) will be permitted a 15 minute break in the morning after two (2) hours of work and 15 minute break in the afternoon after two (2) hours of work. Other employees who are permitted to leave their assigned tasks as conditions permit may continue to do so. However, such unscheduled breaks may not exceed a total of 15 minutes during each four (4) hours of duty.

Section 4: Except in situations where the organization would be seriously handicapped in carrying out its functions or where costs would be substantially increased, efforts will be made to give an employee two (2) weeks notice of a change in tour of duty.

Section 5: The Agency will consider an employee's needs to change car pools, day care and eldercare schedules or other work related commuting arrangements, when scheduling a change in tour of duty.

Article 24
Overtime

Section 1: When the Agency decides to assign overtime to employee(s) who possess the requisite skills and abilities for the assignment, in the same organizational unit performing the same type of duties, the assignment(s) will be fair and equitable among qualified employees.

Section 2: Overtime shall not be worked unless authorized by the Agency. The Parties agree that assignment of overtime will neither be distributed nor withheld as a penalty or reward.

Section 3: The Agency will consider its need versus the needs of the employee(s) when requests are made to be excused from overtime and may seek qualified substitutes for the assignment(s).

Section 4: If practicable, the Agency will provide at least forty-eight hours advance notice to employees when a decision is made to assign overtime, or as much notice as the Supervisor is given, minus time to contact the employee.

Section 5: Qualified employees assigned to a particular task during regular working hours normally will be given the opportunity to complete the assignment.

Section 6: Compensation for overtime work will be made in accordance with applicable laws and regulations. When allowable under controlling laws, regulations, and Agency policies employees may request compensatory time in lieu of overtime pay.

Section 7: Unless flexitime or compressed work schedules apply, the basic workday for full-time employees shall be eight (8) hours each day.

Section 8: Travel by bargaining unit employee(s) outside regularly scheduled duty hours is not compensable through overtime or compensatory time unless such travel has been officially ordered and approved and meets one of the criteria cited below:

A. It involves the performance of work while traveling;

B. It is incident to travel that involves the performance of work while traveling;

C. It is carried out under arduous conditions; or

D. It results from an event which could not be scheduled or controlled administratively.

To the maximum extent practicable, time spent in travel status away from the employee's official duty station will be scheduled by the Agency within the normal working hours.

Section 9: Overtime work performed by employees called back to work outside of and unconnected with their regular work hours is deemed at least two (2) hours in duration for the purpose of overtime compensation, regardless of what portion of the two (2) hours work is performed.

Section 10: Employees required to remain in standby status will be paid in accordance with applicable law or regulation.

Article 25
Leave

Section 1: Annual Leave as provided for by law is an employee right and accrues automatically, in accordance with applicable statutes, OPM Regulations, Agency-wide regulations and this Agreement**.** Employees will be given the opportunity to use their annual leave during the leave year of accrual, subject to approval by management and based on exigencies of the Agency's work. In granting the use of all categories of leave, the Agency will consider its needs versus the needs of the employee.

Subject to applicable law, rule and/or regulations, the Agency shall protect the privacy of an employee's leave record, and divulge their contents on the employee's request or on a need to know basis.

Annual leave and sick leave may be requested and used in fifteen (15) minute increments.

Section 2: When requesting emergency annual leave, the employee will notify his/her supervisor or supervisor's designee of the request by telephone, voicemail, or email, as soon as possible, but no later than two (2) hours after the start of the employee's regularly scheduled tour of duty, unless circumstances prevent the employee from making contact within this period of time. When a request cannot be made in the first two (2) hours, the employee will make the request as soon as practical. In those circumstances where the employee is unable to make the request himself/herself, the employee will cause the supervisor to be notified consistent with this Section**.** The Agency will make a good faith effort to grant emergency annual leave.

Section 3: When it is impractical to grant all requests for annual leave for a given period, the supervisor shall give consideration to all the following factors:

A. The needs of the Agency to accomplish the Agency's mission;

B. Whether the employee has sufficient annual leave on record;

C. Possibility of the employee having to forfeit leave;

D. Seniority (SCD);

E. Mitigating circumstances.

Section 4: Jury duty or witness appearances shall be administered in accordance with applicable law, rules and regulations.

Section 5: Upon request, and subject to supervisory approval, an employee may work compensatory overtime, for the purpose of taking time off without charge to annual leave when personal religious beliefs require that the employee abstain from work during certain periods of

the workday or workweek. The parties recognize that a religious observance is a bonafide reason for requesting annual leave or leave without pay.

Section 6: Advanced annual leave may be granted to the extent of applicable law and regulations that apply; however, an employee may not be advanced annual leave beyond the amount he/she will earn in the current leave year.

Section 7: Tardiness of less than one (1) hour may be excused at the discretion of the supervisor. However, if annual leave is charged, the employee will not be required to perform work until leave time charged has expired.

Section 8: When administrative excusal is granted in the case of inclement weather or other conditions, the Agency will make a reasonable effort to notify the Union, then the employees on duty as soon as possible. Employees in an approved leave status, or working at home under the Flexiplace Program, will not be affected. Essential employees may be required to remain on duty.

Section 9: An employee will be granted annual leave or leave without pay to attend the funeral of a member of his/her family. An employee will be granted "funeral leave" to attend the memorial services of a relative who is a veteran as covered by 5 C.F.R. Chapter 1, Subpart H.

Section 10: Employees who volunteer to serve as blood donors without compensation may be excused for up to four (4) hours to recuperate. If the donor location is not the work site, the excused time for donation and recuperation will not include transit time. It is understood that excusal applies only to the day of donation.

Section 11: As a general rule, where the polls are not open at least three (3) hours either before or after an employee's regular hours of work, he/she may be granted an amount of excused leave which will permit him/her to report to work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time off. Under exceptional circumstances where the general rule does not permit sufficient time, an employee may be excused for such additional time as may be needed to enable him/her to vote, depending on the particular circumstances in his/her individual case, but not to exceed a full day.

Employees requesting more than the general rule will do it in writing. Each request shall state fully the reasons for additional time needed. Additional time may be approved, if determined to be reasonable, up to a total of eight (8) hours. Voting arrangements requiring excused time will be made with the employee's supervisor prior to Election Day to prevent undue interruption of work operations.

Section 12: Leave related to pregnancy, childbirth, or care of infants may consist of sick leave, annual leave or leave without pay, as applicable, and consistent with law, rule and regulations, including the Family and Medical Leave Act of 1993(FMLA).

Section 13: Leave without pay may be granted to employees, subject to management's approval, and in accordance with applicable law, policies, rules and regulations.

Section 14: Leave without pay may be granted to employees, subject to management's approval, and in accordance with applicable policies, law, rules and regulation, in lieu of sick leave or annual leave for employees who have filed a claim for worker's compensation or disability retirement.

Section 15: Accrued sick leave shall be granted to employees when they are incapacitated for the performance of their duties by sickness or injury; for medical, dental, or optical examination or treatment; when a member of the immediate family of the employee is afflicted with a contagious disease (as prescribed by public health authorities having jurisdiction) that requires the care and attendance of the employee; or when in the opinion of the above public health authorities, the presence of the employee at his/her post of duty would unduly jeopardize the health of other employees.

A. An employee requesting sick leave, will notify his/her supervisor, or the supervisor's designee, as soon as possible, but not later than two (2) hours after the beginning of the employee's regular tour of duty. When an employee's situation will require him/her to be absent longer than one (1) day, the employee will so indicate the expected return to duty date.

B. For sick leave periods of not more than three (3) consecutive days, the employee shall not be required to submit a physician's statement of incapacitation or other acceptable evidence unless there is reasonable evidence of abuse.

C. In the event of suspected sick leave abuse, a determination will be made based on the facts. If warranted, the employee will be counseled. The counseling will identify the problem to the employee and advise the employee of the wisdom of the prudent use of sick leave.

D. An employee will be counseled prior to receiving a sick leave letter of requirement. If improvement does not occur within a reasonable period of time, an employee who is found abusing sick leave may be issued a "sick leave letter of requirement." The Agency will review a sick leave letter of requirement not later than six (6) months after issuance. If sufficient improvement occurs, the letter will not extend beyond one (1) year; however, the letter may be withdrawn at any time.

Section 16: Subject to applicable law, rule, and/or regulation, and management's approval, advance sick leave may be granted to an employee. Employees should be aware that sick leave cannot be advanced in excess of thirty (30) days, or the amount of leave the employee would otherwise earn during the remaining term of his/her appointment, whichever is less**.**

Section 17: Military Leave

A. In accordance with law and regulation, full time, permanent or temporary indefinite employees who are members of the National Guard or the Armed

Forces Reserves are entitled to fifteen (15) calendar days of regular military leave in a fiscal year for active duty training.

B. For part time career employees, the rate at which military leave accrues shall be a percentage of the rate determined by dividing forty (40) into the number of hours in the regularly scheduled work week of the employee during that fiscal year.

C. Employees who do not use the entire fifteen (15) days can carry any unused military leave (not to exceed fifteen (15) days) over to the next fiscal year. Military leave may never exceed thirty (30) calendar days in any one fiscal year.

D. Military leave is charged in increments of one (1) hour and is charged only for those hours in which the employee would otherwise be in duty status.

E. When possible, management will arrange schedules to allow such employees to have scheduled days off immediately preceding and following the required military leave if so requested by the employee.

Article 26
Human Resources Development

Section 1: The purpose of training and career development is to enable employees to increase the knowledge, proficiency, ability, skill and qualification in the performance of their official duties. It is understood that the choice of subject matter, areas for training, selection, and assignment of training is a function of management and the program will be administered in accordance with applicable laws, regulations and agency policies.

Section 2: Self development requires the dedication of an individual's personal time and resources. The Parties jointly recognize that responsibility and encourage employees to make such personal commitments. The Agency will not bear the cost of any self development training that has not been approved in advance as required by EPA regulations.

Section 3: The Parties encourage employees to review their official personnel folder to assure that training is recorded and that the folder is otherwise up to date.

Section 4: When the Agency, at a local level, uses a committee process to formulate and recommend training policies and practices affecting employees in the unit, the Union will be given the opportunity to have at least one (1) bargaining unit employee at the location to participate as a committee member on matters affecting the bargaining unit(s) employees.

Section 5: The Agency will administer its Upward Mobility Program in accordance with applicable laws, rules, and Agency policies. The Parties will encourage eligible employees to apply for participation in the Agency's Upward Mobility Program when such opportunities are available. The Agency agrees to periodically evaluate the Program's operation and make modifications where appropriate.

Section 6: When the employee so requests, the reason(s) for disapproval of a training request submitted in writing will be given to the employee in writing.

Section 7: Employees required to join and maintain membership in a professional organization as a condition of continuing employment will have their memberships in such situations paid by the Agency in accordance with applicable regulations and policies.

Section 8: The Agency will consider employee requests for variations in their normal work schedules for educational purposes. The Agency's ability to carry out its activities in a timely fashion will be the primary determinant in the consideration of such requests.

Article 27
Awards

Section 1: Introduction. The EPA Recognition Program reflects the Agency's commitment to promote continuous improvement in the Agency's performance. It is recognized that the use of both monetary and non-monetary awards has a significant effect on employee morale, motivation and performance. The EPA Recognition Program is an incentive program that provides recognition based on employee achievements that contribute to the Agency's mission of providing the highest quality service possible to the public. The EPA Recognition Program is intended to motivate and reward employees to continually strive for excellence. In addition, the program provides for monetary and non-monetary awards for suggestions, inventions and special acts of service or heroism.

Section 2: Authorities. In the administration of all matters covered by this Article, the Union, the Agency and employees shall be governed by 5 U.S.C. Chapter 451 and 531; and 3130, Recognition Policy and Procedures Manual and the Master Collective Bargaining Agreement.

Section 3: Additional Provisions. Recognition will be granted in accordance with the Recognition Policy and Procedures Manual with the following exceptions:

A. EPA Awards Board. The EPA Awards Board shall include representation from the AFGE National Council of Locals.

B. Local Awards Board. It is agreed that the establishment of local awards boards is an appropriate matter for partnering/negotiating at the local level. The procedures and operations of such boards will be locally determined, within the following parameters: (1) boards may vary in function up to and including recommendation of awards; (2) local awards boards must include representation of all unions with recognition at that organization (i.e., there may not be separate awards boards for each union); and (3) board procedures may supplement but not conflict with the above authorities.

C. Awards Budgets. At the beginning of each appraisal period or as soon as available, information concerning the amount and allocation of the awards budget will be provided to the union. At the local level, if there is a further reallocation of the awards budget, the

union will be provided and opportunity for input/feedback during this process. The Union will also be provided with periodic updates on the expenditure of awards budgets.

D. Peer Awards. Peer award nominations will not be limited to $250. The nominator will not specify a dollar amount. The monetary amount will be determined by the recommending/approving official(s). The nominator and nominee must have an established working relationship whether in or out of the same AA/RA-Ship, or on the same team, workgroup, self directed team, or variation thereof.

E. Employee awards information, including names, award types and dollar amounts will be provided to the National and local union on a quarterly basis, or as otherwise agreed to locally. This data will be treated by the union in a confidential manner. At least annually, each organization will publish the names of award recipients and the types of awards they received.

Article 28
Merit Promotion

Section 1: The Parties agree that the purpose and intent of the provisions contained herein are to ensure that merit promotion principles are applied in a consistent manner with equity to all bargaining unit employees and positions, and without regard to political religious, or labor organization or non-affiliation, marital status, race, color, sex, sexual preference, national origin, non-disqualifying disability, or age, and shall be based solely on job-related criteria. This Article shall be administered consistent with 5 U.S.C. Chapter 23.

A. It is agreed that the Agency will use the skills and abilities of bargaining unit employees to the extent possible consistent with mission requirements, merit principles and applicable laws and regulations.

B. Applicants must meet time in grade and time after competitive appointments requirements within thirty (30) days of the closing date of an announcement to be eligible for promotion consideration. Applicants must meet all qualifications and selective placement factors by the closing date of the announcement.

Section 2: Definitions

A. Area of Consideration (Area of Publicity): The designated organizational and/or geographical area in which an intensive search is made for candidates in a specific promotion action. This is the area in which the announcement is publicized.

B. Best Qualified Candidates: Those eligible candidates who rank at the top when compared with other candidates applying under the announcement and who are referred to the selecting official on a Merit Promotion Certificate.

C. Eligible Candidates: Those who meet the minimum qualification standards and possess all appropriate selective placement factors for a particular position.

D. Selective Placement Factors: Knowledge, skills, abilities, and other characteristics (KSAOs) are in addition to OPM qualification standards used to determine basic eligibility because they are necessary for satisfactory job performance.

E. Quality Ranking Factors: Knowledge, skills, abilities and characteristics that are issued to rank eligible candidates.

F. Career Promotion: Promotion without current competition when at an earlier stage an employee was selected from a civil service register or under competitive promotion procedures for an assignment intended to prepare the employee for a higher grade level.

G. Positions with Known Promotion Potential: Positions from which career promotions may be made because adequate competition was held at an earlier stage. These include, among other things; career ladder positions; apprentice positions; trainee positions; understudy positions; positions filled at grade levels within the established career ladder; and upward mobility positions.

H. Promotion: The change of an employee to a position at a higher grade or pay level.

I. Selecting Official: The supervisor/manager who has authority to select an employee for assignment to a position. The selection process is a management prerogative involving the exercise of informed judgment. Each selecting official must be aware of and adhere to equal opportunity principles.

J. Concurrent Consideration: The consideration of employees who are entitled to automatic referral concurrently by the selecting official along with certified applicants. For example, referrals by special appointing authorities, candidates from outside registers, priority considerations, non-competitive promotion eligible etc.

K. Nepotism: Supervisors and public officials as defined in FPM 310, are prohibited from participating in any portion of any selection process if a relative is under consideration. Neither supervisors nor public officials may advocate the selection of a relative. If a relative of the selecting official is among the candidates certified for selection he/she must disqualify himself/herself and the selection authority exercised at a higher level in the chain of command.

Section 3: This program applies to all EPA organizations and covers all competitive service bargaining unit positions**.**

Section 4: When Competition is Required. Competition is required for the following actions:

(1) Promotion or transfer to a higher grade;

(2) Temporary promotion for more than one hundred twenty (120) days. Any prior details to higher graded positions or temporary promotions during the preceding twelve

(12) months (whether competitive or non competitive) must be included when calculating the number of days;

(3) Selection for detail to a higher graded position for more than one hundred twenty (120) calendar days, or to a position with known promotion potential;

(4) Selection for training required for promotion (e.g. the employee is not eligible for promotion unless he/she has completed the training);

(5) Reassignment, demotion, reinstatement or transfer to a position with more promotion potential than a position the employee previously held on a permanent basis in the competitive service (except when a reassignment or demotion is made to place an employee affected by a RIF or in lieu of disability retirement); and

(6) Reinstatement to a permanent or temporary position at a higher grade than any grade held in a permanent position in the competitive service.

Section 5: When Competition is Not Required. Competition is not required for:

A**.** Career Ladder Promotions. Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e. the position has a documented career ladder and promotion potential). These promotions may be made non-competitively for any employee who entered the career ladder by:

(1) Competitive procedures;

(2) Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority); or

(3) Non-competitive appointment under special authority; e.g. conversion of Student Career Experience Program student or Federal Career Intern, appointment of former ACTION Volunteers or Peace Corps personnel (must clear ICTAP through an announcement), conversion of a Veterans Readjustment Act (VRA) appointee and Presidential Management Fellows.

B. Promotion Based on Reclassification when:

(1) No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error; or

(2) The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:

(a) The employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are absorbed into the new position, and the former position is abolished);

(b) The new position has no promotion potential;

(c) The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the unit; and

(d) The accretion is supported by a written analysis of the position (which may involve an audit with the employee and/or the employee's supervisor, or other fact gathering method).

C. Permanent Promotion to a position held under a temporary promotion when:

(1) The assignment was originally made under competitive procedures;

(2) It was known to all competitors at the time that the assignment may lead to a permanent position.

(3) Temporary Promotion of an employee for less than one hundred twenty (120) days; or for more than one hundred twenty (120) days to a grade level previously held on a permanent basis, unless the employee was demoted for reason related to performance or misconduct.

(4) Placement as a Result of Priority Consideration when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.

(5) Reduction in Force Placements which result in an employee receiving a position with higher promotion potential.

(6) Promotion to a Grade Previously Held on a permanent basis in the competitive service, from which the employee was separated or demoted for other than performance or conduct reasons.

(7) Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having No Higher Promotion Potential than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

(8) Promotion Resulting from Successful Completion of a Training Program for which the employee was competitively selected.

(9) Selection from the Re-employment Priority List at the same or lower grade level than the position from which separated.

(10) Reinstatement to any Position if a career or career conditional employee who served under a career SES appointment consistent with 5 C.F.R. 335.103(c)(3).

(11) Promotion as a Legal Remedy as ordered and agreed upon in a legal or administrative proceeding.

(12) Details for one hundred twenty (120) days or less to a higher graded position or to a position with known promotion potential.

Section 6: Area of Consideration (AOC).

A**.** It is important that the AOC be sufficiently broad to uphold the basic merit principles of open competition, equal employment opportunity and identification of Best Qualified-candidates. The AOC is not intended to limit competition. In determining an AOC the Human Resources Office shall consider a geographic and/or organizational area which is likely to result in a reasonable number of qualified applicants. To help EPA meet its mission and diversity objectives, Human Resources Offices may consider any appropriate sources.

B. The minimum AOC will be an organizational unit, no less than a division or laboratory, which is considered sufficient to attract more than one qualified candidate for promotional consideration. The local appointing authority has the option of establishing an area of consideration larger than the minimum prescribed above, especially if experience shows that those minimum areas fail to provide enough qualified candidates.

C**.** An AOC will be established for each vacancy.

D. The Office of Personnel Management will be notified of vacancies in the competitive service for which the Agency will consider applicants from outside the Agency in accordance with 5 U.S.C. § 3327.

Section 7: Posting Vacancy Announcements.

A. The Agency will post a vacancy announcement to cover all vacancies that must be filled in accordance with the procedures of this Article. The Human Resources Office will post announcements on the Agency's automated hiring system for a minimum of ten (10) work days**.** When the area of consideration is broader than the commuting area, vacancy announcements shall remain open for at least 15 workdays. By mutual agreement of the local parties, different periods of time are appropriate matters for local negotiations.

B. Applications post marked or submitted electronically on or before the closing date will be accepted.

C. At a minimum, the vacancy announcement will contain the same type of information as contained in the Office of Personnel Management (OPM) announcement template, for example:

(1) Title, series and grade(s) of the vacancy announcement and announcement number;

(2) Geographic and organizational locations;

(3) Summary statement of the principal work assignments;

(4) Minimum OPM qualification requirements plus any mandatory (selective placement) factors;

(5) Knowledge, skills and abilities and/or competencies and/or task statements required;

(6) Whom to contact for additional information;

(7) Where and/or how applications should be submitted and what they should include;

(8) Opening and closing dates;

(9) If the vacancy has known promotion potential or is a career ladder position;

(10) An EEO statement;

(11) Area of consideration; and

(12) Number of positions expected to be filled at the time if more than one.

Section 8: Method of Locating Candidates. Candidates may be located using a wide range of methods which may vary with each vacancy depending upon the AOC, the type of position, and similar considerations. All Merit Promotion announcements (or subsequent cancellations) will be posted on the Agency Intranet/automated hiring system. These methods include:

A. Vacancy Listings - A brief summary of multiple positions open to competition under the merit promotion procedures.

B. Individual Vacancy Announcements - Posted notices that advertise one or more positions open to competition under the merit promotion procedures. They will contain the same type of information as found in the OPM announcement template. Individual vacancy announcements will be open for a minimum of ten (10) work days. Vacancies

whose area of consideration is broader that the commuting area will be open for at least 15 work days, unless otherwise agreed by the local parties.

C. Open Continuous Announcements - Posted notices through which applications may be accepted and referred to selecting officials on a continuing basis. They may be used when there is a continuous need for candidates in a particular occupation or group of occupations or hard to fill vacancies. They will contain the same type of information as found in the OPM template.

Section 9: Priority Consideration. The referral of individuals who by law, regulation, settlement agreement or final decision in a grievance or discrimination complaint must be considered before other candidates. Types of priority consideration include:

A. Repromotion Consideration Eligibles. Employees demoted in the Agency without personal cause and on grade/pay retention are entitled to priority consideration for any vacancies for which they qualify in the local commuting area. Repromotion eligibles are entitled to priority consideration for two (2) years unless they are repromoted to their former grade or decline a position of equal grade, whichever occurs first. Candidates may receive consideration only at the grade level in which consideration was lost and having no higher promotion potential than the position previously held.

B. Candidates Who Did Not Receive Proper Consideration in a Previous Merit Promotion Action Due to a Procedural, Regulatory, or Program Violation. These candidates will receive priority consideration for the next appropriate vacancy in the geographic location where proper consideration was denied. The following conditions must be met before priority consideration under this provision may be granted:

(a) The vacancy occurs within one (1) year of the determination that the employee was not afforded proper consideration;

(b) It is a similar type position in the same pay system as the position for which the employee failed to receive proper consideration;

(c) The employee is qualified for and would have been in the Best Qualified-group;

(d) The vacancy is at the same grade level, with no higher promotion potential than the position for which consideration was lost.

C. Employees Who Receive Priority Consideration Based on an EEO Complaint. These employees must be given priority consideration if it is either the agreed upon resolution to settle the complaint or the remedial action ordered in the final decision of a discrimination complaint.

D. Displaced Applicants. The Agency will provide special selection priority to eligible displaced applicants who are determined to be well-qualified, in accordance with the

regulatory requirements (e.g. under the Career Transition Assistance Plan or Interagency Career Transition Assistance Plan).

Section 10: Application Procedures.

A. Accepting Applications.

(a) When the Human Resources Office uses an Automated Hiring System.

Unless otherwise specified, applications must be submitted on-line by all candidates by the closing date and time specified in the vacancy announcement. Required documents will be listed in the announcements and must be submitted as specified. For assistance in applying for a vacancy, applicants may contact the Human Resources representative listed on the vacancy announcement for assistance in submitting the on-line application.

(b) When the Human Resources Office uses a Manual Recruitment System. Generally, the manual system will by used only in such situations as identification of systematic problems with the automated hiring system, system failure, and/or loss of vendor contract. Unless otherwise specified, applications will be accepted from all promotion eligible candidates whose applications are receive in the Human Resources Office or postmarked by the closing date. Applications from noncompetitive eligibles, qualified persons with disabilities, 30% or more compensable disabled veterans, VRA eligibles, and Public Health Service Officers may be accepted up until the time the certificate of eligibles in sent to the selecting official. Employees within the area of consideration who are absent for legitimate reasons, such as approved leave, official travel, detail, Intergovernmental Personnel Act assignment, training or military service, may furnish copies of their application to other employees or their supervisor, and request in writing that they be submitted for vacancies.

Section 11: Eligibility Requirements.

A. General. Applicants must meet OPM qualification requirements and any selective placement factors by the closing date of the announcement. Additionally, certain legal and regulatory requirements (i.e. time-in-grade, time-after-competition appointment, etc.) must be met within thirty (30) days of the closing date of the announcement. Applicants applying for open continuous announcements must meet the eligibility requirements at the time the application is submitted to the Human Resources Office.

B. Minimum Qualification Requirements. Minimum qualification requirements will be those described or approved by OPM for the particular position involved, and any mandatory selective placement factors. Qualification requirements are found in the OPM Operating Manual for Qualification Standards for General Schedule Positions.

Section 12: Distinguishing Between Candidates. Candidates who meet eligibility requirements will be divided into two (2) categories:

A. Promotion Eligibles. Those applicants who must compete in order to be placed in the position; and

B. Noncompetitive Eligibles. Those applicants with or without competitive status who are eligible for reinstatement, reassignment, change to lower grade, special appointing authority, (e.g. persons with disabilities, disabled veterans, etc.) or other action where competition is not required for placement in a position.

C. Applicants in the promotion eligible category will be evaluated in accordance with the provisions below. Noncompetitive eligibles will be referred alphabetically without being rated and ranked. Such referrals may be made up until the time the certificate of eligibles is sent to the selecting official.

Section 13**:** Evaluations of Candidates.

A. Applications may be evaluated by a subject matter expert, a rating panel or a human resources representative. Regardless of the evaluator, ratings must be based solely on the application material submitted by the applicant. If an automated hiring system is used to qualify, rate and/or rank applicants, a human resources representative will conduct a quality review before the rating is finalized. When a quality review is conducted for an automated rating, adjustments will only be made in the event that an applicant's answers to the automated question(s) are not consistent with the applicant's resume or other documentation provided in the application package.

B. All candidates who meet the minimum (basic) qualification requirements must be evaluated on job-related criteria (i.e. work experience, education and training) and the selecting official or interview panel will consider applicant awards and appraisals in the selection process, if they are required by the vacancy announcement.

C. Evaluation methods must include an analysis of the job to determine pertinent knowledge, skills, and abilities (KSA's) or competencies that are important for successful job performance. Based on the job analysis, the KSA's/competencies to be used as Mandatory KSA's/competencies and rating factors for the vacancy announcement will be identified and weighted. In an automated hiring system, the identified KSA's/competencies will be elicited in the form of questions or requests for information that the applicant must answer or provide.

D. A rating plan must be developed by the subject matter expert or human resources representative. The automated hiring system or promotion panel/ranking official will provide an objective assessment of each applicant's potential to perform in the vacant position.

E. All candidates meeting basic qualification requirements for the position will be rated and ranked, regardless of the number of applicants.

Section 14: Ranking and Referral of Candidates.

(1) Determining Best Qualified. Promotion eligible candidates will be rated against the KSA's/competencies set forth in the rating plan. Candidates will be identified as either "best-qualified" or "qualified" based on the scores received in the evaluation process. When more than ten (10) candidates are rated as eligible, best-qualified candidates will be determined by using all of the ranking factors listed in the vacancy announcement in the evaluation process. Candidates will be ranked according to their rating scores assigned by the automated hiring system or promotion panel/ranking official.

(2) Referral When There are More Than Ten (10) Qualified Competitive Candidates. The Best Qualified threshold score will be set prior to the close of the vacancy. The Best Qualified candidates who will be referred for consideration will be determined based on the most logical (natural) break in the scores; i.e., two or more points. However, in the event the natural break method results in more than nine (9) Best Qualified candidates, the HR Official will resort to identifying only the top ten (10) numerically ranked candidates who will then be forwarded to the selecting official/panel in alphabetical order. All tied scores (at number 10) will be forwarded to the selecting official. Candidates will be ranked according to the rating score assigned by the automated hiring system or panel/SME and referred in alphabetical order.

(3) If a Best Qualified-certificate is to be used for more than one (1) vacancy, an additional Best Qualified-candidate (if available) may be added for each additional vacancy.

(4) If there are fewer than ten (10) Best Qualified-candidates, only the Best Qualified-candidates will be referred.

(5) If there are no Best-Qualified candidates and the selecting official, with the concurrence of the human resources representative, determines that it is impractical to expand the area of consideration, then the qualified candidates may be referred in alphabetical order. If the human resources representative makes such a decision, the reason(s) why further expansion of the AOC is impractical must be fully documented in writing and included in the Merit Promotion case file.

(6) Duration of the Merit Promotion Certificate. Normally, certificates are issued with a sixty (60) calendar day time limit. In extenuating circumstances, certificates may be extended for an additional sixty (60) days with a written request from the selecting official to the servicing Human Resources Officer.

(7) Use of Certificates for Additional Positions. Certificates may be used to fill additional vacancies for similar positions up to one hundred twenty (120) days. A similar

position is one that is located in the same division or office, has the same title, series, grade and promotion potential, and requires the same KSA's or competencies.

Section 15: Interviews and Selections.

(1) When the selecting official or interview panel receives a merit promotion certificate as a result of a competitive announcement, he/she may interview the candidates, subject to the following:

(a) For each Merit Promotion Certificate issued, the selecting official may interview all or none of the referred promotional candidates.

(b) If one (1) internal EPA candidate is interviewed from the Best Qualified-list, all other EPA, bargaining unit candidates will be given a reasonable opportunity to be interviewed.

(2) The selection process is a management prerogative involving the exercise of informed judgment coupled with responsibility. Selecting officials shall choose the person(s) who, in their judgment, will best fulfill their requirements and the objectives of the organization. Selecting officials may select or non-select any candidate on a certificate of eligibles.

(3) Release and Notification of Applicants. The human resources representative will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one (1) complete pay period for promotions, following the selection. When local workforce and program conditions permit, an employee will be released no later than two (2) complete pay periods for reassignments, following the selection. When an employee is nearing the end of a waiting period for a within-grade increase, consideration should be given to releasing the employee at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee. All Best Qualified-applicants will be notified of the outcome of announced vacancies.

Section 16: Disclosure of Information. Merit Promotion information will be disclosed in accordance with the provisions of the Privacy Act, 5 C.F.R. Part 335, existing supplements and this agreement.

(1) Internal Agency applicants will be notified of:

(a) Whether they were found eligible;

(b) Whether they were referred to the selecting official; and

(c) Who was selected; and

(d) Whether the vacancy announcement was cancelled and why.

(2) Applicants may request and receive information concerning:

(a) Areas, if any, they should improve to increase their chances for future promotions; and

(b) The applicants own rating assigned in the ranking process.

Section 17: Employee Inquiry and Concerns. When an employee has a question or concern about the merit promotion process he/she should discuss it with an appropriate human resources representative. Employees wishing to raise concerns through the grievance procedure or complaint of discrimination must follow appropriate time frames provided for in the negotiated grievance procedure or the discrimination complaint process. Bargaining unit employees may not file grievances based solely on non-selection.

Section 18: Records. The Agency will maintain promotion and selection information for two (2) years or after an OPM evaluation, whichever comes first, in accordance with governing laws, rules and regulations. Each record shall contain sufficient information to allow reconstruction of the promotion action, including documentation on how employee candidates were rated and ranked. It is understood that some information may be precluded from release subject to applicable regulation and/or law.

Article 29
Career Ladder Promotions

Section 1: It is the policy of the Agency to provide appropriate opportunities for bargaining unit employees to develop and advance in their careers.

Section 2: Employees in career ladder positions will be given maximum opportunity to reach the full potential of their assigned career ladders. Upon placing an employee in a career ladder position, the supervisor will discuss the job requirements and expectations for the employee to reach the next higher level. The supervisor will hold these discussions at each level of the employee's progression within the career ladder.

Section 3: Career ladders are not automatic; an acceptable level of performance must be demonstrated for progression. Employees in career ladders will clearly demonstrate the ability to perform at the next higher grade level before being promoted to the next grade in the career ladder. Once the promotion has been made, supervisors will assign work at the new grade level.

Section 4: At the time an employee meets time-in-grade and any other legal promotion requirements, the supervisor will make a decision to promote or not to promote. This decision will be made in a timely manner.

Section 5: The supervisor will periodically provide feedback to the employee about their performance in the career ladder position.

Section 6: Employees not meeting the criteria for promotion will be counseled by their supervisor regarding areas needing improvement before the promotion can be effected in accordance with applicable law, rules, or regulation.

Article 30
Reassignment

Section 1: The provisions of the Article apply solely to reassignments within the bargaining unit(s).

Section 2: An employee who is reassigned will be given a reasonable period of time to learn and satisfactorily perform the functions of his/her new position in accordance with the Agency's approved Performance Management System as incorporated into this Agreement.

Section 3: Employees desiring reassignment within the Agency may either apply for vacancies through the merit promotion process, directly to the organization which they are interested in, or to the appropriate Human Resources Office.

Section 4: Reassignments to positions with promotion potential higher than the employee's current position are processed under the provisions of the Merit Promotion Article of this Agreement.

Article 31
Details

Section 1: The provisions of this article apply solely to the assignment of bargaining unit employees within the unit. A detail is the temporary assignment of an employee to a different position or set of duties for a specified period of time. There is no formal position change, officially, the employee continues to hold the position from which detailed and keeps the same status and pay; with the employee normally returning to his/her regular duties at the end of the detail.

Section 2: Details shall be rotated equitably among those employees who have been determined by management to have the capacity and requisite skills for assuming the responsibilities of the assignment unless competitive procedures are used.

Section 3: The Agency will provide a memorandum to the employee documenting official details to higher level classified positions of more than ten (10) consecutive work days. Official details in excess of thirty (30) calendar days will be recorded on an SF-52 "Request for Personnel Action."

Section 4: An employee temporarily assigned to a classified position at a higher level for more than thirty (30) calendar days will receive a temporary promotion as soon as practicable, but no later than the 31st day of the assignment. The employee must meet any qualification and eligibility requirements to be promoted.

Temporary promotions in excess of 120 calendar days shall be filled through competitive procedures. Temporary promotions of less than 120 calendar days may be rotated equitably among those employees who have been determined by management to have the capacity and requisite skills for assuming the responsibilities of the assignment unless competitive procedures are used.

Section 5: Details to a lower classified position shall not affect the employee's classification or salary.

Section 6: Details to less physical, stressful or other demanding positions may be used for employees undergoing or completing medical treatment.

Section 7: Length of details will be in accordance with OPM regulations.

Section 8: Management will keep details within the shortest practicable time so that they will not promote any compromise of the open competitive principles of the Merit Promotion System.

Article 32
Selective Placement Programs

Section 1: The Parties hereby agree to support the Agency's Selective Placement Programs established under the provisions of the Rehabilitation Act of 1979 (P.L. 93-112), as amended by P.L. 93-516, and the Veteran's Readjustment Act of 1974 (P.L. 93-508) and in accordance with regulations and policies.

Section 2: The Parties will work together in an effort to find and make reasonable accommodations to known physical and mental limitations of qualified employees.

Section 3: The Agency will work with Reasonable Accommodation Coordinators in considering accommodations for known disabled employees; such as making facilities accessible; possible job restructuring; appropriate work equipment or devices; or obtaining the services of readers or sign language interpreters where appropriate.

Article 33
Position Classification

Section 1: A bargaining unit employee shall be provided a current position description reflecting their principal duties and responsibilities, normally within the first Pay Period of assignment to a position. Employees may discuss with supervisors any perceived substantial differences between the duties assigned or performed, and those contained in the position description. Occasionally, an employee may be required to perform "other duties as assigned" which are incidental to the principal duties and responsibilities of the position, that are impractical to include in the narrative portion of the position description, as well as duties which may be required in emergency situations, consistent with the Agency's mission. When permanent changes in the duties, responsibilities, or supervisory relationship so warrant, the

position description shall be amended or rewritten in a reasonable time, generally within 30 calendar days.

Section 2: A bargaining unit employee will be given a reasonable advance notice of any position audit or review that may affect the classification of the employee's position. The Union will be given reasonable advance notice, not less than ten (10) work days of management initiated audits (i.e., not in response to employee requests or dissatisfaction with current title, series or grade) of two (2) or more bargaining unit employees that may affect the classification of the employees' positions. Employees are encouraged to review the "Employee Guide to Desk Audits" to prepare for the audit. Employees have access to this information on the Agency's website http://www.opm.gov or they may contact their servicing Human Resources Office. If the audit or review results in proposed changes to the employee's position description, the employee will be notified prior to effecting the change. Additionally, the employee will be provided a copy of any written evaluation prepared by the Agency as a result of an audit or review.

Section 3: An employee dissatisfied with the classification of his/her position should first discuss the classification with his/her supervisor. If the supervisor is unable to resolve the issue to the employee's satisfaction, at the employee's request the appropriate human resources official will explain the basis for the classification/job grading.

Section 4: A General Schedule employee who still believes his/her position is improperly classified may:

A. Request a desk audit at the local level (i.e., the HR office servicing that region, lab, or headquarters component) by submitting a written request to the human resources office, with a copy to his/her supervisor. This step must happen before selecting any other options provided in this section, since an "appeal" is an appeal of the decision made at the local level. At the employee's request a Union representative may participate in the desk audit as a silent observer.

B. File an appeal at the Agency level to the Director, Office of Human Resources, who is the Agency Appellate Authority; or

C. If dissatisfied with the Agency's decision, the employee may file a subsequent appeal, with the Office of Personnel Management through the Agency; or

D. File an appeal directly with the Office of Personnel Management.

Section 5: A Federal Wage System employee who still feels his/her position is improperly classified may:

A. Request a desk audit at the local level (i.e., the HR office servicing that region, lab or headquarters component), by submitting a written request to the human resources office with a copy to his or her supervisor. This step must happen before selecting any other options provided in this section, since an "appeal" is an appeal of the decision made at the local level.

B. File an appeal with the Director, Office of Human Resources who is the Agency Appellate Authority;

C. Provide the name, address, and business telephone number of the employee's representative, if a representative has been selected;

D. Provide information on other decided or pending appeals, complaints, or administrative decisions where the classification of the same position is or was an issue; and

E. If dissatisfied with the Agency's decision the employee may file an appeal with the Office of Personnel Management within fifteen (15) calendar days of the date of the receipt of the Agency's decision.

Section 6: The appeal should discuss the specific aspects of the position that the employee thinks were either misunderstood or not considered adequately. It should also include copies of the current classified Position Description, and any evaluation report by HR. The position description submitted should be the employee's position description of record.

Section 7: When designated as the employee's representative, the Union may assist an employee who has filed a classification appeal in the preparation of such an appeal.

Section 8: When the Agency is afforded the opportunity to review and comment on proposed position classification standards by OPM for bargaining unit positions covered by this Agreement, the Agency will provide notice to the Union at the National Level. The Union may forward its comments separately to OPM.

Section 9: The Agency will, upon request, provide the Union with access to written classification standards and qualification standards that the Agency maintains.

Section 10: The Agency agrees to inform the Union as soon as possible when, due to reorganization or realignment of program responsibilities, the Agency is establishing new positions and/or is making significant changes in the duties and responsibilities of positions within the bargaining unit, and when changes in position classification standards result in changes to title, series or grade, or bargaining unit status of bargaining unit positions. The Union may request to make recommendations and present supporting evidence thereto. The Union must provide its recommendations and supporting evidence to management's representative within fifteen (15) calendar days of the notification. The Agency will consider the Union's recommendations and upon request advise the Union of the results of its review.

Article 34
Reduction in Force and Transfer of Function

Section 1: Scope. This Article governs Reduction in Force (RIF) and Transfer of Function (TOF) actions as provided in applicable laws and regulations. For purposes of this Article, the following terms are defined in law and are included for informational purposes:

A. Reduction in Force (RIF): When the Agency releases a competing employee from his or her competitive level by furlough for more than thirty (30) days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within sixty (60) days or within thirty (30) days in emergency situations.

B. Transfer of Function (TOF): The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive areas in which the function is performed to another commuting area.

C. Function: All or a clearly identifiable segment of any agency's mission (including all integral parts of that mission, regardless of how it is performed).

D. Competitive Area: The Agency will define the competitive area for a RIF or TOF action. The competitive area may consist of all or parts of the Agency. The competitive area will be defined solely in terms of EPA's organizational unit(s) and geographical location and will include all employees within the competitive area so defined.

E. Competitive Level: Positions in the competitive area that are in the same grade (or occupational level) and classification series that are so alike in qualification requirements, duties, responsibilities, pay schedule, and working conditions that the incumbent of one position can successfully perform the critical elements of any other position in the level upon assignment to it, without loss of productivity or undue interruption.

F. Commuting Area: The geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people like and can reasonably be expected to travel back and forth daily to their usual employment.

G. Undue Interruption: A degree of interruption that would prevent the completion of required work by the employee ninety (90) days after the employee has been placed in a different position under a RIF action. However, a work program would generally not by unduly interrupted even if an employee needed more than ninety (90) days after the RIF to perform the optimum quality or quantity of work. The ninety (90) day standard may be extended if placement is made to a low priority program or to a vacant position.

Section 2: Statement of Principle.

A. The Agency and the Union recognize that employees may be seriously and adversely affected by a Reduction in Force (RIF) or Transfer of Function (TOF) action. Before implementing a RIF or TOF affecting bargaining unit employees, the Agency will attempt to minimize adverse effects through such appropriate means as attrition, reassignment, furlough, hiring freeze, and early retirement. The Agency considers a RIF to be an action of last resort.

B. Before taking a final decision in the matter, the Agency will meet with the appropriate Local for the affected location(s) as soon as possible to discuss any alternatives that could alleviate adverse effects on employees.

Section 3: Notice to the Union. When the Agency reaches a final decision to take a RIF or TOF action, the Council President and the affected Local will be notified in writing at the earliest possible date, but no later than ninety (90) days prior to the effective date. Notice will include the reason for the RIF or TOF, approximate number and types of positions to be affected, geographic location, and anticipated date of the planned actions.

Section 4: Retention Registers. The Agency will make current its retention registers before giving notice to affected employees. Upon request, the Agency will provide the Union with a copy of the updated retention register(s) and will meet with the Union to discuss any questions the Union has regarding the register(s). Employees will be permitted to review retention registers with the employee's name, and other retention registers for other positions that could affect the composition of the employee's competitive level and/or the determination of the employee's assignment rights.

Section 5: Consistent with 5 CFR 351, after notice to the Union, the Agency will provide notice of RIF or TOF action to affected employees of no less than sixty (60) full days. Individual RIF or TOF notices must include the following information:

A. The action to be taken, the reason for the action, and its effective date;

B. The employee's competitive area, competitive level, retention subgroup, service date, and three most recent performance ratings of record received during the last four (4) years;

C. The place where the employee may inspect the regulations and records pertinent to this case;

D. The reasons why any lower standing employees in the same competitive area are being retained;

E. Grade and Pay retention information applicable to the employee receiving the notice;

F. Information on reemployment rights;

G. The employee's right to grieve the action under Article 38, Negotiated Grievance Procedure.

H. The option to either grieve the action under Article 38, Negotiated Grievance Procedure or to the Merit Systems Protection Board if the employee alleges the RIF action is a Prohibited Personnel Practice under 5 USC 2302.

Section 6: Offer of Position.

A. The Agency shall, in accordance with 5 CFR 351, if possible, offer an assignment to each employee adversely affected through the implementation of a RIF or TOF. Consistent with 5 CFR 351.701 the offer, if made, shall be of a position as close as possible to, but not higher than, the current grade of the affected employee, and the position shall be in the same competitive area. Employees adversely affected by a RIF or TOF may request, in writing, that they be assigned to a particular continuing position meeting the provisions in the previous sentence. An employee is restricted to making such a request only one time; the request can be made only after the retention registers have been completed. Such an employee request will be answered within ten (10) days. These employee requests will not be grievable under the Negotiated Grievance Procedure if the request is rejected by the Agency.

B. Employees will respond in writing to a best offer of employment to another position within fifteen (15) calendar days of receipt of a written offer. Failure to respond within fifteen (15) days will be considered a rejection of the offer.

Section 7: In accordance with applicable RIF and TOF regulations and to the extent feasible, if the Agency is unable to offer an assignment to an affected employee, the Agency will waive some qualifications for a vacant position which it intends to fill, which does not contain selective placement factors, provided the a) employee meets any minimum education requirement for the position; b) Agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

Section 8: Use of Vacancies. To the extent possible, the Agency will not fill a vacant bargaining unit position within the organizational unit in which the RIF is taking place until it has considered all reasonable alternatives to reduce the adverse effects on bargaining unit employees who are to be displaced as a result of the RIF. In considering these alternatives, the Agency will review the possibility and feasibility of redesigning vacant positions.

Section 9: Relocation.

A. Employees who are relocated by the Agency as a result of action covered by this Article will receive relocation expenses and authorized absence as provided by law and regulations.

B. Employees reassigned to a different commuting area who relocate will be allowed a period of time, as appropriate on a case by case basis, to complete the move and report to work at the new work location.

C. The employee will be provided administrative time to research relocation matters such as area housing and schools in the new geographic location, disposition of their current homes, and to handle any other matters related to the move, to the extent allowable under appropriate laws and regulations.

Section 10: Placement Services.

A. The Agency will utilize all resources available under applicable law and regulation in efforts to place employees who are separated or reduced in grade in a RIF. This will include the Agency's Reemployment Priority List and OPM's Career Transition Assistance Program. Employees separated in a RIF will receive priority consideration to fill vacant positions at the activity where they worked for which they are qualified for in accordance with eligibility and employment restrictions per 5 C.F.R. 330.

B. Whenever technological changes cause abolishment of some jobs and the establishment of other, the Agency agrees, when feasible, to utilize the abilities and skills of the displaced employees through established re-training programs designed to qualify these employees for other jobs:

(1) when feasible and applicable by law and regulation, and
(2) consistent with the abilities of the employees.

C. Repromotion:

(1) for a period of two (2) years, an affected employee demoted by an action covered by this Article will be repromoted to vacancies the Agency determines to fill as they occur according to the following criteria:

(a) A satisfactory performance rating on his/her most recent rating which is documented in his/her official personnel file and meets other eligibility requirements of 5 C.F.R. 330.

(b) The employee has the requisite skills and abilities for the position without undue interruption.

(2) If more than one employee meets the criteria of subsection 1 and is not subject to the criteria in subsection 2, the employee who has the higher retention standing will be promoted.

(3) An employee who was previously demoted without personal cause, misconduct or inefficiency, and who meets all other eligibility criteria in 5 C.F.R. 330, will receive special consideration for repromotion.

D. Employees facing RIF actions will receive reasonable amounts of administrative leave to contact federal job placement officials and employment agencies.

Section 11: Excepted Service. In reduction in force and transfer of function actions, the Agency will apply the same procedures in this Article for both competitive and excepted service employees only as provided by applicable laws and regulations; however, excepted service employees will compete only with other excepted service employees in the same appointing authority and in the same competitive area. In no case will excepted and competitive service employees compete with each other for retention or placement.

Section 12: Unemployment Compensation. The Agency will counsel employees who are to be separated in a RIF in their eligibility and procedures for applying for unemployment compensation. Expert assistance from the relevant state will be obtained if the employee requests.

Section 13: Furloughs.

A. Employees who are furloughed during a lapse in appropriations will be retroactively paid and otherwise compensated when appropriations are approved to the extent permitted by law and regulation.

B. Employees will be allowed to request a specific schedule for the furlough time. An employee's request will be honored unless management determines that mission and workload prevents approval of the request. Should an employee request be denied, the employee will be provided written reasons for the denial.

C. The Agency will have a liberal leave without pay (LWOP) policy during periods of furloughs, but will not coerce any employee into using LWOP during a furlough. The Agency will inform employees of any differences in eligibility for unemployment compensation if the employee is placed on furlough of LWOP.

Section 14: Reemployment. In accordance with applicable laws and regulations, terminated employees as a result of RIF action will be notified of Agency vacancies for which they are qualified and will receive priority consideration over non-Agency employees for a two year period.

Article 35
Contracting Out

Section 1:

A. Management agrees to notify and consult with the Union regarding any anticipated review of a function for contracting out that affects bargaining unit positions, as required or allowed by law, rule or regulation, OMB Circular A-76 and its Supplement, and this

Agreement. This notification to the Union does not include a function that currently is not being performed by bargaining unit employees.

B. Upon issuance, a solicitation used in the conduct of a cost comparison will be made available to the Union for comments. The Union shall be given the opportunity to review the document and submit comments before final receipt of offers from the private sector. Private sector offerors shall comment as provided by the Federal Acquisition Regulations.

Section 2: The Agency agrees to minimize the need to separate employees by a contracting out decision. It will use attrition and restrict new hires to the maximum extent possible, in the event of a RIF and will place the affected employees in positions consistent with OPM regulations.

Section 3: In the event the Agency determines to conduct a cost analysis study pursuant to OMB Circular A-76, during the course of the study, it will hold monthly meetings with affected bargaining unit employees for the purpose of providing information. The Union will be given an opportunity to participate in such briefings. The Parties can mutually agree to postpone or cancel any meeting. If there is no information to provide, the Agency will advise the employees and the Union via electronic mail and the meeting may be postponed or cancelled.

Section 4: Management and the Union recognize the right of first refusal required by OMB Circular A-76 and its Supplement. Declining to exercise the right of first refusal due to displacement from contracting out shall not be deemed to be a waiver in any appeal or grievance rights a bargaining unit employee might have under applicable law, regulation, and this Agreement.

Section 5: The Agency and the Union will cooperate and communicate to the maximum extent possible.

Section 6: During the contract performance period, the Union is encouraged to bring known contract deficiencies to the appropriate contract administrator or designee's attention.

Article 36
Equal Employment Opportunity

Section 1: No employee will be denied a benefit of employment by the Agency, or a benefit or right of unit membership by the Union, because of the employee's race, color, creed, national origin, sex, age, sexual preference, Union affiliation, lawful political affiliation, marital status, or qualifying handicapping condition. Both Parties support the realization of a representative work force within the unit at all levels.

Section 2: The Parties hereby affirm their support of affirmative action.

Section 3: When the Agency, at the local level utilizes an EEO committee, or councils, the Union will be given the opportunity to have at least one bargaining unit employee at the location as its representative to participate as a committee member on matters affecting unit employees.

Section 4: The Union will designate an authorized representative for the Agency to deal with on all EEO matters which are beyond local scope and impact.

Section 5: The Union may submit the names of bargaining unit employees who are interested in serving as EEO Counselors to the appropriate management official. Employees who meet the criteria for an EEO Counselor and are selected by the Agency will receive appropriate training in accordance with the applicable policies and regulations. No Union representative who handles employee representation functions for the union may serve as an EEO Counselor nor may an EEO Counselor serve in a representative capacity for any employee.

Section 6: A bargaining unit employee may file an EEO complaint under the Negotiated Grievance Procedure or the administrative procedure provided by statute and regulations, but not both. An employee filing a formal EEO complaint under the Agency's procedure is entitled to a representative of personal choice subject to Agency policies and regulations. An employee filing a formal EEO complaint under the Negotiated Grievance Procedure may be represented only by an authorized Union representative.

Section 7: Upon request, in accordance with the provisions of Section 7114(b)(4) of the Statute, and this Agreement, the Agency will provide any prepared statistical EEO reports and EEO complaint summaries on the unit to the Union.

Section 8: An employee shall be deemed to have exercised his or her option in filing an EEO complaint at such time as the employee timely initiates a formal written EEO complaint/notice of appeal under the statutory procedures or timely initiates a grievance in writing above the first step (informal) in accordance with the Grievance Article.

Section 9: Employees are encouraged to discuss EEO allegations with an EEO counselor. Discussions between an employee and an EEO Counselor do not preclude an employee from opting to select the negotiated procedure.

Article 37
Disciplinary and Adverse Actions

Section 1: The Agency and the Union recognize that the public interest requires the maintenance of high standards of conduct. The Parties collectively agree that the purpose of any disciplinary action is to correct or improve employee behavior and to maintain discipline within the workforce. All disciplinary actions will be taken only for just and sufficient cause. Suspension for more than fourteen (14) days, removals, reductions in grade or pay, and furloughs of thirty (30) days or less will be taken for such cause as will promote the efficiency of the service.

A. Where applicable, the Parties agree to the philosophy of progressive discipline.

B. Whenever possible, disciplinary actions will be conducted privately and in such a manner as to avoid embarrassing the employee.

C. Disciplinary and adverse actions will be initiated as timely as possible after the offense is committed or Management becomes aware of the offense.

Section 2: Definitions.

A. An informal action is non-punitive in nature and includes closer supervision, oral admonishment or a letter/memorandum of warning.

B. An adverse action is a formal disciplinary action consisting of a suspension of more than fourteen (14) calendar days, a reduction in grade or pay (as defined in 5 C.F.R. 752.402), a furlough of thirty (30) calendar days or less, and removal.

C. A formal disciplinary action is a suspension of fourteen (14) calendar days or less and letters of reprimand.

D. Performance-based actions and RIF actions are neither disciplinary nor adverse actions.

E. Where there are calendar based deadlines for action by the Agency, the Union, or individual bargaining unit employees, and the last day falls on a day which the official duty station is closed (weekends, holidays, emergency closures, etc.) the deadline shall be the next business day in which the official duty station is open.

Section 3: Informal Actions.

A. The supervisor or appropriate management official shall advise the employee of the specific infraction or breach of conduct, and give the employee the opportunity to explain his/her side of the matter and, if warranted, an oral admonishment will outline what steps are necessary to preclude a recurrence. The employee will be provided reasonable time to seek union representation if requested. It is understood that it is the employee's obligation to make such a request.

B. Letter/memorandum of Warning consists of a description of the misconduct, an outline of positive corrective steps, and state what penalty might result if the actions continue.

C. Since this section deals with informal actions which are not disciplinary in nature, the Agency will not cite any records regarding such an informal action beyond eighteen (18) months in any subsequent disciplinary action which might occur. The only exception is where, in the interim period, an action for a like offense has been issued.

Section 4: Disciplinary Actions.

A. Before issuing a letter of reprimand, the supervisor or appropriate management official must fully discuss the incident in question, with the employee to permit the

employee to present his/her side of the situation. If after the employee presents his/her views, the supervisor or appropriate management official considers a reprimand to be warranted it will be issued to the employee in writing by the immediate supervisor or appropriate management official not less than two (2) work days after the discussion. The letter will state the employee's right to be represented by an attorney or other representative, including the Union. The employee will be given five (5) business days to provide a written response to the reprimand. The employee shall be authorized a reasonable amount of official time to prepare a response. This response will be included in the employee's file with the reprimand if so requested. Letters of reprimand will be maintained in an employee's Official Personnel Folder for up to two (2) years.

B. Any suspension of fourteen (14) days or less must be preceded by a written proposal notice at least fourteen (14) calendar days before the discipline is to be effected. The employee will be given ten (10) calendar days in which to provide the deciding official a response either orally, in writing, or both. Advance notices will specify the deciding official to whom the employee should provide any reply. The notice will state the employee's right to be represented by an attorney or other representative, including the Union. The employee shall be authorized a reasonable amount of official time to prepare a response.

C. The employee shall be provided with an additional copy of all disciplinary actions marked "COPY for EMPLOYEE's REPRESENTATIVE".

Section 5: Adverse Actions. All adverse actions with the exception of C and D below, must be preceded by written notice at least thirty (30) calendar days before the intended effective date. Employees will receive at least fifteen (15) calendar days to provide the deciding official a response, either orally, in writing or both and to furnish affidavits or other evidence in support of the answer. Employees shall be granted a reasonable amount of official time to prepare the response. The notice will state the employee's right to be represented by an attorney, or other representative, including the Union. The deciding official or designee will consider requests for extensions of time, and may grant them where he/she believes the request reasonable.

A. The advance notice shall inform the employee of the right to review the material management is relying upon to propose the action.

(1) If supervisory notes are kept on employees, the notes will be maintained in a secure fashion and disclosed only to those officials with a need to know. Supervisory notes, or the applicable portion thereof, used to support a disciplinary or adverse action are to be made available to the employee upon request, as soon as practicable.

(2) The Agency may redact any material reviewed or supplied to the employee/representative, consistent with legal or regulatory requirements. If management is relying upon witness statements, the Agency will provide the identity of the witness(es), and any witness statements.

B. The notice of proposal will specify the Agency official who will hear the employee's answer and make a decision on the proposal. The official will normally be the next higher level official in the proposing official's chain of command, unless the proposing official is the Deputy Administrator, or Administrator of the Agency. If the employee chooses to make an oral reply, the reply will be made at the deciding official's work location, unless agreed otherwise. In cases where the employee and deciding official work at different locations, but within the same commuting area, the employee will travel to the deciding official's work location, unless agreed otherwise. When the two are in different commuting areas, the oral reply will be made by video or telephone conference, unless agreed otherwise. The deciding official or his/her designee, will summarize the oral reply, if any, and include it in the case file. If the employee chooses he/she may provide a summary to be included in the case file.

C. In cases of proposed adverse action when the Agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, and the Agency determines it to be in its best interest, no advance notice is required.

D. An advance written notice and opportunities to respond are not necessary for furlough without pay due to unforeseeable circumstances, such as acts of God, or sudden emergencies requiring immediate curtailing of activities. Management agrees that such furloughs will be an act of last resort. When Management has the authority to do so, excused absence may be granted, as appropriate.

E. The employee shall be provided with an additional copy of disciplinary actions marked "COPY for EMPLOYEE'S REPRESENTATIVE."

Section 6: Decisions. The decision will be provided in writing to the employee and will specify the charges sustained and the penalty imposed. The decision will include the rights of appeal available to the employee and will notify him/her of the right to designate a representative, including the Union.

The Agency will consider the following factors when making a final determination on the appropriateness of a penalty in an adverse action case. The proposing and deciding official must review each case individually and apply those factors that are relevant. The factors may or may not weigh in the employee's favor:

A. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

B. The employee's job level and type of employment, including any fiduciary role, contact with the public, and/or prominence of the position;

C. The employee's past disciplinary record;

D. The employee's past work record, including length of service, job performance, ability to get along with fellow workers, and dependability;

E. Any effect of the offense upon the employee's ability to perform at a fully successful level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;

F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

G. Consistency of the penalty with the penalties in the Agency's conduct and discipline order;

H. The notoriety of the offense or its impact upon the reputation of the Agency;

I. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

J. Potential for the employee's rehabilitation;

K. Aggravating or mitigating factors surround the offense, such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and

L. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Section 7: Removal from the work place pending a decision.

Under ordinary circumstances, an employee whose removal has been proposed will remain in a duty status in the position of record during the advance notice period. In circumstances in which the Agency reasonably believes that the employee's continued presence in the work space during the reply period poses a threat to persons or property, or otherwise jeopardize Government interests, the Agency will consider the following alternatives prior to placing the employee in a paid, non-duty status:

(1) Assigning the employee to duties where the perceived threat no longer exists;

(2) Placing the employee on leave, with his/her consent; or

(3) Carrying the employee in the appropriate status if he/she is absent for reasons not originating with the Agency.

(4) If none of these alternatives are selected, the Agency may place the employee in a paid, non-duty status during all or part of the advance notice period, as consistent with law or regulation.

Section 8: Employees may only grieve a disciplinary action through the Negotiated Grievance Procedure (NGP). Employees may appeal adverse actions to the Merit Systems Protection Board (MSPB), or file a grievance under the NGP, but may not do both. Once an employee has elected to file an MSPB appeal or a written grievance under the NGP, the employee may not change subsequently to the other procedure.

Section 9: In lieu of rendering a decision on a proposed action a deciding official may choose to offer an employee a settlement agreement, or access to ADR if locally established pursuant to Article 38 of this Agreement. Any settlement agreement may not conflict with the terms of this agreement. Any settlement talks which constitute "formal discussions" under 5 U.S.C. Chapter 71, may be attended by a Union representative pursuant to Article 5, Section 8 of this Agreement.

Section 10: This Article will be administered as required by law and in accordance with MSPB regulations. Where an employee appeals an adverse action through the negotiated grievance procedure and the Union proceeds to arbitration, the arbitrator is bound by the same rules governing the burden of proof and standards of proof that govern adverse actions before the Merit Systems Protection Board.

Section 11: The Parties recognize that the age of any evidence offered by any Party may be a factor detracting from its credibility and that as such, such evidence may lose its probative value.

Article 38
Negotiated Grievance Procedure

Section 1: The Parties agree that this Article establishes the sole and exclusive procedure available to bargaining unit employees and the Parties for processing and settlement of grievances that fall within its coverage, including questions of grievability and arbitrability. The Parties recognize and endorse the importance of bringing to light and resolving grievances in a prompt manner. The Parties agree that the expeditious resolution of grievances is in the public interest. Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability.

Section 2: A grievance means any complaint:

A. By any bargaining unit employee concerning any matter relating to the employment of the employee;

B. By the Union concerning any matter relating to the employment of a bargaining unit employee; or

C. By the Union or the Agency concerning:

(1) The effect or interpretation, or claim of breach of this Agreement, Supplemental Agreements or Memoranda of Understanding; or

(2) Any claimed violation, misinterpretation, or misapplication of law, rule, or regulation affecting conditions of employment.

Section 3: In addition to any other exclusions contained in this Agreement, the grievance procedure will not apply to:

A. Any claimed violation of Subchapter III of Chapter 73 of Title 5, U.S.C. (relating to prohibited political activities);

B. Retirement (5 C.F.R. 831), life insurance (5 C.F.R. 870, 871, 872 and 873) or health insurance (5 C.F.R. 890);

C. Any examination or certification (5 C.F.R. 332 and 337), or appointment, e.g., the separation of an employee during a probationary period (5 C.F.R. 2, 3, and 8);

D. A suspension or removal under Section 7532 of Title 5 U.S.C. (Relating to national security matters);

E. The classification of any position which does not result in a reduction in grade or pay of an employee (5 C.F.R. 511);

F. A management decision to make or terminate a temporary promotion, detail, or reassignment;

G. The adoption or non-adoption of a suggestion or the receipt or non-receipt of an honorary or cash award in accordance with the terms of this agreement;

H. The mere non-renewal or extension of a temporary employee, termination of a temporary appointment due to reduction in force, and any other termination of the appointment of a temporary employee in accordance with applicable policy, law and this Agreement;

I. Separation of a term, trial or excepted service employee in accordance with applicable policy, regulation, law, or this Agreement.

Section 4: Other Applicable Procedures

A. The following actions may be filed either under the appropriate statutory procedure or under the procedure outlined in this Article, but not both:

(1) Actions based on unsatisfactory performance (5 U.S.C. 4303);

(2) Adverse Actions (5 U.S.C. 7512);

(3) Prohibited Personnel Practices (5 U.S.C. 2302 (b) (1));

(4) A formal EEO complaint (29 C.F.R. 1614).

B. Nothing in this Agreement shall constitute a waiver of any further appeal or review rights permissible under 5 U.S.C. Chapter 71.

C. An employee shall be deemed to have exercised his/her option under this section when he/she timely initiates an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure in this Article, whichever occurs first.

D. Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is initiated within forty-five (45) days of the event or non-event which caused the grievance to be filed, and no formal EEO complaint has been filed. Per 29 C.F.R. Part 1614, initiating one formal process precludes the use of the other.

Section 5: Only the employee or a representative designated by the Union may be the representative in a grievance under this procedure.

A. If an employee chooses to represent him/herself, the Agency will: (1) provide the Union with a copy of the grievance within one workday of receiving the grievance; (2) provide the Union with advance notice of each meeting between the grievant and the Agency; (3) afford the Union the right to be present at all stages of the process; and (4) provide the Union with copies of Agency written grievance responses and/or settlement agreements/written resolution**.** Any resolution of the grievance must comply with the terms and conditions of this Agreement, including any applicable supplements, amendments, or Memoranda of Understanding.

B. If the Union is the grievant's designated representative, the employee will so state in writing at the initial filing of the grievance. Communications under this procedure shall be directed to the representative designated by the Union**.** Any changes to that designation also will be in writing. Each Party shall have a representative available to meet referenced grievance filing time frames. Extensions may be granted by mutual agreement of the Parties.

Section 6:

A. A grievance must be filed initially within thirty (30) days of the date of the matter, incident or issue out of which the grievance arose or thirty (30) days after the date the grieving party or person should have been aware of the matter, incident or issue. The use of the word "day(s)" will be interpreted as calendar days. A step of the grievance procedure can be waived by mutual agreement of the Parties.

B. Requests for extensions to the time limits for filing must be submitted, in writing, to the other Party prior to the expiration of the applicable time limit. Requests for extensions of time limits shall be considered upon receipt of a written request and justification. A written decision will be provided to the requesting Party. If the Agency fails to comply with the time limits at any step of the grievance process, the grievance may be advanced to the next step of the process.

C**.** The Agency will provide timely and appropriate responses to information requests from the Union consistent with 5 U.S.C. Section 7114**.**

Section 7: A reasonable amount of official time during work hours will be allowed for employees and Union representatives to discuss, prepare for, and present grievances including attendance at meetings with Agency officials concerning the grievance.

Section 8: Employee Grievance Procedure

Informal Grievance:

The Parties recognize that grievances may arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis.

At the election of the employee or his/her representative, an employee complaint may be brought to the supervisor or appropriate management official with authority to resolve the matter in an attempt to resolve the matter informally. The supervisor or appropriate Agency official will provide a written response within five (5) work days of the matter being brought to their attention under this Section. If a matter is not resolved in this manner, the employee or his/her representative, may file a grievance in accordance with the procedures set forth herein. At the election of the employee or his/her representative, this informal process may be bypassed. An election to pursue resolution informally does not toll the required time frames for filing a formal grievance. However, an extension may be granted by mutual agreement of the Parties.

If the dispute cannot be resolved informally or the employee or his/her representative chooses to forego the informal meeting described above, the following formal process must be used:

Formal Step 1

A. An employee will present his/her grievance in writing to the immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In that case, the employee will present his/her grievance to the Agency official at the level having the necessary authority.

B. The employee must state specifically that he/she is presenting a grievance; the personal relief sought; the name, organizational unit and location of the aggrieved; a statement of the items, regulations or agreement alleged to have been violated, citing specific paragraphs or articles; designation by name of the Union representative or statement of self-representation. The grievance must be signed and dated.

C. Within fifteen (15) calendar days after receipt of the grievance, the step 1 deciding official will issue a written decision. If the grievance is denied, the response will include the name of the Step 2 Agency official who has the authority to resolve the matter. The Agency's failure to respond to the grievance within the specified time frames, or as mutually agreed to by the Parties, will automatically advance the grievance to the next step.

Step 2

A. If the matter is not satisfactorily settled following Step 1, the aggrieved employee and/or his/her representative, if any, may, within fifteen (15) calendar days of notification of denial or the date that a response should have been received, present the matter in writing to the Step 2 Agency official identified in the Step 1 decision. The grievance will contain the information submitted in Step 1 plus the Agency response at Step 1.

B. The Step 2 Agency official shall issue a written decision on the grievance within thirty (30) calendar days of receipt of the grievance. If the grievance is not satisfactorily settled, the Union may refer the matter to arbitration in accordance with the procedures set forth in the Arbitration Article.

C. If at any time during the processing of a grievance a settlement agreement is accepted by the employee or his/her designated representative, the agreement shall be in writing and the grievance shall be withdrawn in its entirety upon execution of the settlement agreement.

Section 9: Grievance of the Parties

A. Should either Party have a grievance concerning institutional rights granted by law, regulation or this Agreement, it shall inform the designated representative of the other Party of the specific nature of the complaint in writing, as well as any provision of law, rule, or regulation allegedly violated, and the relief sought, within thirty (30) days of the date of the matter, incident or issue being grieved, or the date the Party reasonably should have been aware of the matter, incident or issue. The grieving Party will file the grievance with the designated representative of the other party at the level of recognition.

(1) A local matter will be filed with the designated local representative of the other Party; or

(2) A national matter will be filed with the designated national level representative.

B. Within thirty (30) calendar days after receipt of the written grievance, the receiving party will send a written response stating its position regarding the grievance. If the matter is not resolved, the grieving party may refer it to arbitration in accordance with Article 44.

Section 10: Alternative Dispute Resolution (ADR)

A. Alternative Dispute Resolution (ADR) may be used to promote principles and practices that will contribute to an improved working relationship either before or during the processing of a grievance. The ADR process demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. It is intended to resolve disputes quickly and informally.

B. The ADR program will be guided by the following principles:

(1) The employee grievant or his/her representative may opt to use the ADR process at any time during the grievance procedure prior to the Step 2 decision**.**

(2) Any request for ADR must be filed to the Agency's designated representative in writing prior to the expiration of any controlling time frame in the grievance process.

(3) If a matter is not resolved through ADR, the grievance will continue through the grievance process, beginning at the step where the Party first made a request for ADR. (If the grievant already filed a step 2 grievance and was waiting a reply, the process resumes where it left off.)

(4) This process does not take away statutory rights.

(5) ADR is purely voluntary on the part of the Employee. Participation is open to all aggrieved Parties, i.e., employees, Union and Agency.

(6) ADR is confidential. The Parties to the ADR process will be advised that the contents of the mediation discussion are confidential. All notes will be destroyed at the close of mediation.

(7) All ADR Settlement Agreements signed by the Parties to the ADR are binding on the Parties and will be recorded. Each Party will be provided a copy of the ADR Settlement Agreement. Copies of agreement with original signatures will be maintained by both Parties**.**

(8) Any issue subject to the grievance procedure may be considered for ADR.

(9) The Parties agree to educate employees on the ADR process.

(10) If ADR is requested, time frames of the grievance process are tolled until the ADR process is completed.

(11) The ADR process will be completed within 30 (thirty) days.

C. ADR procedures, expenses, and choice of mediators, shall be subjects for local level negotiations.

Article 39
Arbitration

Section 1: Only the Union or the Agency may refer to arbitration any grievance that remains unresolved after the final step under the negotiated grievance procedure. A notice to invoke arbitration shall be made in writing, by hard-copy or by electronic mail, to the opposite Party within thirty (30) calendar days of receipt of the written decision rendered in the final step of the grievance procedure.

Section 2: The Party desiring to submit the grievance to arbitration shall request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial qualified persons to act as arbitrators. The Parties shall meet within five (5) days after receipt by both Parties of the list of Arbitrators. If they cannot mutually agree upon one of the listed arbitrators, the Parties will each strike three (3) names, and the remaining person will be the duly selected arbitrator. The flipping of the coin or other mutual agreeable means will be used to determine which Party will strike the first three (3) names. The initiating Party will pay the FMCS fee. If either Party refuses to participate in the selection of an arbitrator then the other Party may select the arbitrator.

A. Once a final name is selected the Parties will sign the FMCS arbitration form letter and mail, fax or email it back to FMCS within ten (10) workdays. If electronic filing is used, the requesting Party shall submit the selection form to FMCS and provide a copy to the other Party**.** The parties will ensure that the listed names, addresses and phone numbers of the applicable Union and Management representatives and the arbitration issue are correct.

B. The hearing with the arbitrator will normally be within sixty (60) days of the written notification to avoid arbitrating "stale" facts, dependant upon the arbitrator's availability.

C. Upon selection of an arbitrator, the representatives for the Parties will jointly communicate with the arbitrator and each other to select a mutually agreeable date for the hearing.

Section 3: Any extensions of the time limits in this Article must be mutually agreed upon by the Parties. Any request for an extension(s) must be in writing, specifically identifying which time frame in this Article the requested extension is for and the reason. A denial or agreement from the opposite Party must be in writing. These requests become part of the grievance file.

Section 4:

A. The cost of the arbitrator's fees and expenses will be shared equally by the Parties**.**

B. If the Party invoking arbitration should withdraw anytime prior to a decision being rendered by an arbitrator, the invoking Party shall bear the full cost of any charges and expenses imposed by the selected arbitrator.

C. If a settlement agreement is reached prior to the hearing the Parties agree to notify the arbitrator that the matter has been settled as soon as possible in order to minimize the costs.

Section 5: Issues and charges raised before the arbitrator shall only be those raised at the last stage of the applicable grievance procedure. The arbitrator shall have no authority to alter in any way the terms and conditions of this Agreement, any supplemental agreement or any other condition of employment or issue not properly before him/her.

Section 6: No later than five (5) work days prior to the arbitration, the Parties will make available all evidence and proposed witnesses then within its knowledge to the other party. On the last work day prior to the arbitration the parties will meet to exchange all evidence and proposed witnesses which they intend to enter into the proceeding. If evidence or information becomes available to a Party prior to the start of the proceeding which has not been made available to the other Party and it is intended to enter that evidence or information in the arbitration, the other Party will be provided that evidence or information immediately. If the information or evidence is substantial, at its discretion, the other Party may obtain a postponement of the arbitration for one (1) work day, or until the arbitrator's next available date, whichever is less.

The parties will attempt to reach agreement on joint exhibits. By mutual agreement the parties may conduct the above exchanges via email rather than in person.

Section 7: Prior to the hearing, the Parties will attempt to stipulate the issue(s) to be arbitrated and any factual matters which would expedite the arbitration. In the event no questions of fact exist, the Parties may, by mutual agreement, forego a formal hearing and present the grievance directly to the arbitrator by written submission. The arbitrator is empowered to make a finding and award based on those submissions. If the Parties are unable to agree on a joint stipulation of the issues, each Party shall submit its statement of the issue(s) to the arbitrator. The arbitrator shall determine the issue(s) to be heard.

Section 8: It is the Agency's responsibility to ensure all management witnesses approved by the arbitrator and who are currently employed by the Agency are informed of the arbitration hearing date and location.

Section 9:

A. Arbitration hearings will normally be held on the Agency's premises, when practicable, or at a mutually agreeable site which will minimize the costs of the hearing for both Parties. The hearing will be held during the regularly scheduled workweek. Employees (e.g., witnesses, technical representatives, representatives) in a duty status will be excused from duty for the time necessary to participate in the arbitration

proceedings (in the case of union representatives and the grievant, this will be recorded as official time for representational activity).

B. The Union and the Agency shall each be allowed up to two (2) representatives to present its case; additional representatives may be permitted on an equal basis only, by mutual agreement of the Parties.

C. In arbitration hearings involving a single named grievant or multiple named grievants from a single duty station, if the hearing is not held at the grievant(s) official duty station, the Agency shall pay travel expenses and per diem, as authorized by law and regulations, for:

a. The single named grievant, or
b. Multiple named grievants from a single duty station, and
c. One union representative employed at the same official duty station as (a) or (b) immediately above.

The Agency shall not be required to pay these costs if the Agency agreed in writing to conduct the hearing at the official duty station.

D. The Parties shall determine the location of hearings on national Grievances of the Parties filed by Council 238 on a case by case basis by mutual agreement. In the event the parties cannot agree on a location, location disputes shall be resolved by an arbitrator. The arbitrator shall be selected on an alternating basis from a Washington D.C. area FMCS list and a list from the official duty station of the President of Council 238. The arbitrator's decision shall not be decided based on personal appearance, but using an alternative method as specified by the arbitrator (e.g. paper submission, telephone /video conference). The Arbitrator shall make his/her decision on how he/she would like to have the issue of location presented based on position statements submitted separately by the Parties. Position statements to the Arbitrator on the issue of how the Parties should present the case to the Arbitrator shall be mailed to the Arbitrator and to the other Party within thirty (30) calendar days of the selection of the Arbitrator**.**

Section 10: The Agency will make its presentation first in disciplinary and adverse action cases. In all other issues, the Party requesting the arbitration will make its presentation first in the hearing.

Section 11: The arbitrator will be requested to render his/her decision as quickly as possible, but in any event not later than thirty (30) days after the conclusion of the hearing or closing of the hearing record, including submission of briefs, unless the Parties agree to extend the time limit.

Section 12: When the Parties mutually agree to an expedited arbitration, the arbitrator may render a decision at the close of the proceedings. Such bench decisions will have no precedential value with regard to future grievances or arbitrations.

Section 13: Arbitration hearings may be bifurcated (separated into two parts) only by mutual

agreement of the Parties.

Section 14: The arbitrator's award shall be binding on the Parties; however, either Party may file an exception with the Federal Labor Relations Authority under regulations prescribed by the Authority. The filing of an exception to the Authority will serve to automatically stay the implementation of the award until the exception is disposed of under the terms of this section.

Article 40
Supplemental Agreements and Other Negotiations During the Life and Term of This Agreement and Designated Representatives of the Parties

Section 1: The Parties agree that the circumstances under which negotiations are appropriate during the life and term of this Agreement are included and described below:

A. At the Union's option, when the Agency, at any level, proposes a change in the substance of an otherwise negotiable personnel policy, practice or working condition not part of this Agreement;

B. At the Union's option, when the Agency, at any level, exercises a management right and the impact of that decision creates adverse impact on bargaining unit employees;

C. At either option, local level negotiations on matters delegated to the local level by this Agreement;

D. By mutual consent, a reopening of this Agreement; and

E. At a local level, a single supplemental agreement; on matters not set forth in (A) through (D) above by mutual consent of the Parties at that local level.

Section 2: In situations (A) and (B) described in Section 1, the Agency will notify the authorized agent of the Union in advance in writing of the proposed change or management decision and its impact. (It is understood that the Agency is not required to negotiate its decisions which do not adversely affect the bargaining unit.) The Agency will notify the authorized agent of its decision and date of implementation. When negotiation is desired, the authorized agent will indicate his/her desire to enter into negotiations by advising the authorized Agency representative in writing within ten (10) days from receipt followed by written proposals within fourteen (14) days from receipt. Upon request, the Agency will explain the proposed change or management decision and its impact to the designated union representative.

Section 3: In situations (C) and (D), the party desiring negotiations will so indicate by presenting written proposals to the authorized representative of the other party.

Section 4: In situation (E) the party desiring to negotiate will present its proposals in their entirety to the other party. Within fifteen (15) working days, the other party will present any proposals on subjects not covered by the initiating party's proposals. Within ten (10) working days after presentation of those proposals each party will indicate in writing whether it desires to

enter into negotiations. If both parties agree, a written signed document to that effect will be sent to the respective national level representatives and negotiations may proceed. Supplemental Agreements must conform to the provisions of Section 5 of the Duration Article.

Section 5: The parties agree to recognize each others duly authorized representatives. At each location, the parties shall designate an authorized agent. At the Agency and national levels, the parties shall designate an authorized representative. All dealings between the parties shall take place between the appropriate authorized representatives unless an authorized representative designates another individual to act in his or her place. Understandings reached by unauthorized individuals will have no force and effect unless approved by the authorized representative of the parties. The parties will advise each other of their respective authorized representatives at the local levels at least annually. The parties will notify each other of their authorized Agency or national level representative in writing and such authorization will remain in effect until revoked.

Section 6: Nothing in this Agreement precludes the Agency, at its explicit election, from negotiating on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

Section 7: Where appropriate, the parties will negotiate ground rules for bargaining of issues arising from the operation of this Article which are at the national level. Where an employee/union representative's travel would be in the primary interest of the Government, the payment of those travel expenses may be negotiated by the parties in ground rules bargaining.

Section 8: In all preparations, negotiations and other activities arising under this Agreement, the parties will be aware of their obligation to the public to conduct such activities in the most cost efficient and cost effective manner.

Section 9: Existing conditions of employment not in conflict with law or provision of this Agreement will remain in effect.

Section 10: An equal number of union representatives as management representatives shall be authorized official time while engaged in local negotiations.

Article 41
Duration

Section 1: This Agreement shall remain in full force and effect for three (3) years from the date of approval by the Agency Head or designee and may be extended in one (1) year increments thereafter.

Section 2: Either Party may reopen this Agreement after eighteen (18) months from approval by the Agency Head or designee. The Party desiring to reopen this Agreement will notify the other Party in writing not less than sixty (60) days, but not more than ninety (90) days in advance by presenting written proposals. The reopening will be limited to six (6) articles in this Agreement by each Party [a total of twelve (12) articles].

Section 3: If either Party desires to renegotiate this Agreement upon termination, it will notify the other Party in writing no less than sixty (60) days but not more than ninety (90) days prior to the expiration date of the Agreement (or anniversary date if the Agreement has been extended). In the event neither Party requests negotiations, the Agreement will be automatically extended for one (1) year.

Section 4: The Agency will provide a copy of this Agreement to all bargaining unit employees. Employees entering on duty after the initial distribution will be informed of the Union's exclusive recognition and provided a copy of this Agreement.

Section 5: It is understood that any local level supplemental agreement, understanding, or condition of employment must comply with the terms and conditions of this Agreement and may not conflict with this Agreement except by the express, written, consent of the Parties to this Agreement. Local level supplemental agreements, understandings or conditions of employment will have the same duration of this Agreement and will expire on the expiration date of the Agreement unless this Agreement is extended under the provisions of this Article.

Section 6: The Union will be provided copies of the Agreement as follows: ten (10) copies to the National Office; one hundred (100) copies to the National Level Representatives; and fifty (50) copies to each Local. The Union will provide the Agency with the names and mailing address of the individuals authorized to receive the copies.

Formal Signature Page to be Included upon completion of Agency Head Review Process